

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

OHANA GROWTH PARTNERS, LLC

VERSUS

CASE NO.
C-03-CV-24-002264

RYAN DILLON-CAPPS

_____/ June 26, 2024

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motion/Preliminary Injunction)

BEFORE THE HONORABLE MICHAEL S. BARRANCO
ASSOCIATE JUDGE

APPEARANCES ON BEHALF OF THE PLAINTIFF:

ROBERT BRENNEN, ESQUIRE
VICTORIA HOFFBERGER, ESQUIRE

ON BEHALF OF THE DEFENDANT:

RYAN DILLON-CAPPS, ESQUIRE

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1 P R O C E E D I N G S

2 * * * *

3 (WHEREUPON, proceedings began at 9:18:15
4 a.m.)

5
6 THE COURT: All right. Good morning
7 everyone.

8 MR. BRENNEN: Good morning, your Honor.

9 THE COURT: The Court will call the case
10 of Ohana Growth Partners, LLC versus Ryan
11 Dillon-Capps, C-03-CV-24-002264.

12 Start with, uh, we're here for a hearing
13 on, uh, the plaintiff's Motion for Preliminary
14 Injunction.

15 Let's start with, uh, in terms of
16 identifying yourselves, the plaintiff's counsel and
17 who you're here with.

18 MR. BRENNEN: Thank you, your Honor.
19 Robert Brennen and Victoria Hoffberger from Miles and
20 Stockbridge on behalf of the plaintiff Ohana Growth
21 Partners, LLC.

22 THE COURT: Good morning, Mr. Brennen,
23 Ms. Hoffberger.

24 MR. BRENNEN: Good morning.

25 MS. HOFFBERGER: Good morning.

1 THE COURT: Okay. Sir?

2 MR. DILLON-CAPPS: Uh, I'm Ryan
3 Dillon-Capps.

4 THE COURT: Okay. Are you represented
5 by an attorney?

6 MR. DILLON-CAPPS: No. I mean, I -- I
7 was, and then they had bereavement.

8 THE COURT: Okay. Have you all had a
9 chance to, erm, have a seat for a minute.

10 Have you all had a chance to talk about,
11 uh, this situation to see if this can be resolved
12 without a hearing?

13 MR. DILLON-CAPPS: Erm, I did ask.

14 THE COURT: You what?

15 MR. DILLON-CAPPS: I did ask if we could
16 talk about it. I -- I was actually submitting a
17 request to Ohana for weeks to speak to a lawyer to
18 resolve the FMLA issue, which is primarily what is
19 this problem.

20 THE COURT: What is the problem?

21 MR. DILLON-CAPPS: So --

22 THE COURT: The family leave issue?

23 MR. DILLON-CAPPS: No, no, not, uh, my
24 bereavement, my attorney had bereavement.

25 THE COURT: Right.

1 MR. DILLON-CAPPS: Sorry. Erm, I've
2 been on FMLA since January 4th.

3 THE COURT: Right.

4 MR. DILLON-CAPPS: And on 12th and on
5 the 13th I requested for FMLA leave --

6 THE COURT: Mm-hmm.

7 MR. DILLON-CAPPS: -- erm, on both days
8 I was forced to worked. Erm, on the 13th I submitted
9 a cease and desist saying they're encroaching on my
10 FMLA, please let me have my FMLA time.

11 Erm --

12 THE COURT: All right. But that's a
13 separate --

14 MR. DILLON-CAPPS: No, no, it --

15 THE COURT: I know you might think it's
16 related, uh, but in the Court's view that is a
17 separate matter. And the question I have right now
18 is that, erm, so, you've been served with, uh, the
19 temporary restraining order, correct?

20 MR. DILLON-CAPPS: I got it late, yes.
21 I got it on Monday at like 10, not this Monday, last
22 Monday.

23 THE COURT: Okay. Have you complied
24 with it?

25 MR. DILLON-CAPPS: Uh, no, I have --

1 THE COURT: You were served with it on
2 June 17th?

3 MR. DILLON-CAPPS: I'm sorry?

4 THE COURT: You were served with it on
5 June 17th, correct?

6 MR. DILLON-CAPPS: I -- I don't know
7 what the days are, but, yes. I --

8 THE COURT: Or June 14th, I'm sorry.

9 MR. DILLON-CAPPS: No, I definitely did
10 not get it the 14th, I think that was last Friday.

11 MR. BRENNEN: Uh, your Honor, he -- he
12 did receive the -- the temporary restraining order
13 was issued by the Court on June 17th, and he received
14 a copy via e-mail on the same day.

15 THE COURT: Okay.

16 MR. DILLON-CAPPS: At 10 p.m.

17 THE COURT: Okay. Your process server
18 received the papers on June 14th, that's where I'm
19 getting that from, and then, on the 17th --

20 MR. BRENNEN: That's correct.

21 THE COURT: -- he was served.

22 MR. BRENNEN: He was -- he was served
23 with the --

24 THE COURT: Okay.

25 MR. BRENNEN: The papers that the

1 process server served him with included the complaint
2 and summons and the motion papers, and the proposed
3 TRO, which is identical to the one that was entered.

4 THE COURT: Okay. And then, how was he
5 -- how -- how, if at all, was he served with the TRO
6 signed by Judge DeSimone?

7 MR. BRENNEN: He, uh, was sent a copy of
8 it via e-mail from me --

9 THE COURT: Okay.

10 MR. BRENNEN: -- erm, twice, including,
11 uh, uh, we -- we -- I got an e-mail from him on the
12 evening of -- of June 17th, erm, asking that I resend
13 e-mails that I had sent to his Ohanagp.com e-mail
14 address on the 14th, which included the papers that
15 we filed, and I complied with that.

16 I -- and I have copies of the e-mails I
17 could show the Court --

18 THE COURT: Okay.

19 MR. BRENNEN: -- that I sent him, uh,
20 resent him those e-mails so he had all the papers in
21 electronic form in addition to having been served on
22 that --

23 THE COURT: Which shows that they were
24 sent. Mr. -- did you receive them? Did you receive
25 the e-mails?

1 MR. DILLON-CAPPS: I was --

2 THE COURT: With the TRO?

3 MR. DILLON-CAPPS: I was -- I was
4 suspend -- suspended on the evening of the 13th, and
5 I did not.

6 THE COURT: Just answer my question.
7 Did you receive by -- did you receive actual notice
8 that a TRO was entered?

9 MR. DILLON-CAPPS: On Monday at 1:30
10 that was done, and then 10 o'clock that it was
11 ordered.

12 THE COURT: Okay.

13 MR. DILLON-CAPPS: I -- I did not have
14 any chance to defend myself on the TRO.

15 THE COURT: All right. Have you
16 complied with the terms of Judge DeSimone's order?

17 MR. DILLON-CAPPS: No, I submitted a
18 letter.

19 THE COURT: Have you complied, just
20 answer my question.

21 MR. DILLON-CAPPS: I have not.

22 THE COURT: Okay. All right. Erm, and
23 I'll -- I'll ask my question again, do you have -- do
24 you have any interest in talking, to having a good
25 faith discussion with, uh, the plaintiff's counsel

1 about resolving this before we proceed?

2 MR. DILLON-CAPPS: I have, and I do. I
3 would very much.

4 MR. BRENNEN: And, your Honor, uh, on at
5 least two occasions, erm, including Monday evening,
6 this -- the past Monday evening the 24th, uh, sent,
7 transmitted via e-mail, erm, it may not have been
8 Monday evening, but I transmitted via e-mail, a, uh,
9 a proposal, uh, that would make this hearing
10 unnecessary. That, uh, it -- the only nonnegotiable
11 term was the trans -- compliance with the TRO --

12 THE COURT: Mm-hmm.

13 MR. BRENNEN: -- the transfer of the
14 admin rights, uh, for both the, uh, Microsoft 365
15 account and for the GoDaddy account.

16 THE COURT: Okay.

17 MR. BRENNEN: Erm, I got a response.
18 Uh, we -- we -- we wanted to get compliance by 5:30
19 p.m., erm, because, you know, we're getting ready for
20 this. And I got a response after that, erm, via
21 e-mail, from the defendant saying "I'm not trying to
22 ignore you, erm, what are the orders that you are
23 referring to", uh, because I -- I had referenced,
24 erm, the -- the order, the show cause that was
25 entered on Friday by Judge Truffer, which was sent to

1 the same e-mail address as everything else by Judge
2 Truffer.

3 THE COURT: What order did Judge -- did
4 he -- what show cause order was that, I'm sorry?

5 MR. BRENNEN: The show cause.

6 THE COURT: 'Cause I was -- I was just
7 assigned this yesterday, and I -- I read the
8 complaint, the affidavits, the motion for, uh,
9 preliminary injunction, but what -- what show cause
10 order was (unintelligible, speaking over).

11 MR. BRENNEN: So on Thursday, uh, we
12 filed a motion, uh --

13 THE COURT: For contempt?

14 MR. BRENNEN: -- for contempt --

15 THE COURT: Okay.

16 MR. BRENNEN: -- on the TRO. And on --

17 THE COURT: And Judge Truffer issued a
18 show cause order?

19 MR. BRENNEN: Judge Truffer issued a --

20 THE COURT: When -- when --

21 MR. BRENNEN: -- show cause.

22 THE COURT: -- is his response due to
23 the show cause?

24 MR. BRENNEN: Today. It was --

25 THE COURT: Today?

1 MR. BRENNEN: -- the order was issued on
2 Friday to have him show cause today.

3 THE COURT: Okay. Was this put in, then
4 maybe you have to clarify, is this in today for, uh,
5 for this -- for a show cause hearing or a motion --
6 or on the preliminary injunction or both?

7 MR. BRENNEN: It -- we --

8 THE COURT: Because I was actually
9 surprised at how quickly -- often times after a TRO
10 is entered the Assignment Office isn't always able to
11 schedule a preliminary injunction hearing so
12 promptly, and the TRO's are often extended either by
13 consent or by motion, and then, it gets scheduled,
14 but in this case it seems to me that it was
15 scheduled, as it should be, I guess, prompt -- fairly
16 promptly before the TRO expired.

17 So, but go ahead. What is -- what is
18 your --

19 MR. BRENNEN: Well, we've arrived here
20 today under the impression that we're here on both
21 the preliminary --

22 THE COURT: On both?

23 MR. BRENNEN: -- injunction and per
24 Judge Truffer's order, uh, the -- the show cause.

25 THE COURT: Okay.

1 MR. BRENNEN: But we -- we have
2 attempted, erm --

3 THE COURT: Well, let's -- let's start
4 with the show cause, because right now I guess what
5 you've said is, is that he's in violation of a court
6 order that he was, uh, served with or, at least, on
7 notice of. And I think the Rules provide the TRO's
8 effective upon either service or, uh, or actual
9 receipt, or receipt of actual --

10 MR. BRENNEN: Correct.

11 THE COURT: -- notice, which it seems
12 that he has.

13 MR. BRENNEN: He clearly has, and, erm,
14 that's evidenced by the June 18th, uh, correspondence
15 he submitted to the Court the day after the TRO was
16 entered making his case for why he felt he couldn't
17 comply.

18 So he acknowledges in his letter to the
19 Court that he has the TRO and that he's not complying
20 with it. Uh, that he -- he also acknowledges that he
21 was directed by his employer to take these same
22 measures, and was disobeying those as well.

23 So we think his letter in essence, erm,
24 acknowledges all the material facts that go to not
25 only establishing the three claims that we've pled in

1 our complaint, but also the contempt.

2 But we're happy, uh, to, uh, sit down
3 and -- and allow the defendant an opportunity to show
4 cause.

5 THE COURT: All right. Mr.
6 Dillon-Capps, you were ord -- erm, first of all,
7 Judge DeSimone's order required, his temporary
8 restraining order required you to do certain things,
9 and then, I now have it before me.

10 Erm, on June 21st, Judge Keith Truffer
11 did enter an order to appear and show cause,
12 requiring you to be here and to show cause as to why
13 you should not be held in contempt of the Court's
14 June 17th temporary restraining orders.

15 So, why haven't you complied with the
16 Court's order.

17 First of all, let's put him under oath.

18 THE CLERK: Please stand and raise your
19 right hand.

20 RYAN DILLON-CAPPS,
21 first duly sworn to tell the truth, the whole truth,
22 and nothing but the truth, testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: Thank you, you may be
25 seated.

1 For the record, please state and spell
2 your first and last name.

3 THE WITNESS: Erm, Ryan Dillon-Capps.
4 R-Y-A-N, Dillon-Capps is D-I-L-L-O-N hyphen
5 C-A-P-P-S.

6 THE CLERK: Thank you.

7 EXAMINATION BY THE COURT

8 THE COURT: All right, sir. Erm, as I
9 said, another judge on this bench, Judge Marc
10 DeSimone entered a temporary restraining order
11 requiring you to do certain things and restrain from
12 doing certain things.

13 You were, erm, you're here today,
14 there's another order entered by Judge Keith Truffer,
15 another judge on this bench, requiring you to be here
16 to show cause as to why you shouldn't be held in
17 contempt of court for failing to comply with the, uh,
18 TRO; what do you want to tell me?

19 You're under oath.

20 MR. DILLON-CAPPS: Thank you. Erm, the
21 short is that this -- we have an SEC contract in
22 place our -- our --

23 THE COURT: Who's "we"? You don't --

24 MR. DILLON-CAPPS: They just --

25 THE COURT: -- personally -- you worked

1 -- you worked for the plaintiff, correct?

2 MR. DILLON-CAPPS: Yes.

3 THE COURT: You're an employee?

4 MR. DILLON-CAPPS: Yes.

5 THE COURT: Okay. You have any
6 ownership interest?

7 MR. DILLON-CAPPS: No.

8 THE COURT: Okay. And you understand
9 you owe a duty, as an employee you owe a duty of
10 loyalty to your employer; you understand that?

11 MR. DILLON-CAPPS: Erm, well, yes,
12 that's true, except for the fact that our agreement,
13 the group's agreement, Planet Fitness has an
14 agreement with Ohana that allows them to operate,
15 and --

16 THE COURT: Okay.

17 MR. DILLON-CAPPS: -- in that agreement,
18 uh, certain things are said.

19 THE COURT: What -- what concern is that
20 agreement and -- and Plant --

21 MR. DILLON-CAPPS: For sure.

22 THE COURT: -- and --

23 MR. DILLON-CAPPS: Planet Fitness, the
24 franchisor --

25 THE COURT: Yeah.

1 MR. DILLON-CAPPS: -- is currently under
2 contract with the SEC to --

3 THE COURT: Mm-hmm.

4 MR. DILLON-CAPPS: -- maintain PCI
5 compliance standards.

6 THE COURT: Mm-hmm.

7 MR. DILLON-CAPPS: Erm, in addition to
8 that, the FTC has, erm, already shown that they have
9 the right to domain over, uh, data protection related
10 to consumers, and both of those things do, in fact,
11 apply in this case of federal jurisdiction.

12 In addition --

13 THE COURT: What concern is that of --
14 yours as to whether or not the plaintiff is in
15 compliance with FTC regulations or not?

16 MR. DILLON-CAPPS: Uh, because what
17 they're asking me to do is to violate PCI compliance.

18 THE COURT: No, it's what the Court had
19 ordered you to do.

20 MR. DILLON-CAPPS: Okay. And I will
21 say, again, that if I do the thing that I'm asked to
22 do, it will be a violation of PCI compliance,
23 violating the SEC's --

24 THE COURT: To give access back to your
25 employer?

1 MR. DILLON-CAPPS: No, that is not what
2 the request is to be done, that's a misunderstanding,
3 along with several other statements that they made
4 are misleading.

5 For example, uh, they did not note that
6 they put my, uh, IT coordinator on a leave of
7 absence.

8 It was a pure FMLA retaliation. And --
9 and FMLA's regulations, rules, rules, said that it's
10 all their burden to actually prove that it's not,
11 so --

12 THE COURT: That has nothing to do with
13 why we're here today.

14 MR. DILLON-CAPPS: But it is, because
15 their demand was I had to work and do this thing
16 immediately. And their claim is that if I didn't --

17 THE COURT: No, the Court ordered you to
18 do this immediately.

19 MR. DILLON-CAPPS: For sure, and that is
20 why --

21 THE COURT: Why have you not complied
22 with the Court order?

23 MR. DILLON-CAPPS: Because I don't want
24 to violate a federal contract and the FTC, and be in
25 issue, 'cause that is a -- a -- really choice where

1 this is --

2 THE COURT: Are you -- are you
3 contending this would place you -- that -- that
4 complying with what the Court has ordered you to do
5 would cause you violate a federal law?

6 MR. DILLON-CAPPS: Yes, it would,
7 actually.

8 THE COURT: What law?

9 MR. DILLON-CAPPS: Hmm, sorry. I -- I
10 have a list. Erm, erm --

11 THE COURT: So what do you contend the
12 workaround would be to -- for you to relinquish your
13 control and give it back to the employer without --

14 MR. DILLON-CAPPS: Oh --

15 THE COURT: -- vio -- without putting
16 you at risk, if you believe you're at risk? There's
17 got to be a workaround, so what is --

18 MR. DILLON-CAPPS: Oh, there is.
19 There's -- there's been plenty of opportunities
20 provided, erm --

21 THE COURT: No, what's the workaround?

22 MR. DILLON-CAPPS: Oh, any -- any of
23 them that I suggest and offered them. So, for
24 example, on there was actually -- Justin Drummond,
25 would actually already have access on Monday, if he

1 had simply met with me on Monday as we had planned.

2 THE COURT: Why should he have to meet
3 with you? Why can't you just turn over access to
4 him?

5 MR. DILLON-CAPPS: Erm, because I would
6 have to, as an authorized personnel, he is not -- in
7 fact, none of their people that made the order
8 actually are qualified to be authorized personnel.

9 THE COURT: Well, what concern is that
10 of your's?

11 MR. DILLON-CAPPS: Because they're --
12 they're --

13 THE COURT: Why isn't that your
14 employer's concern?

15 MR. DILLON-CAPPS: Oh, because they're
16 not given that right by like, just because they're my
17 employer, the right is given based on the standards
18 itself on who is actually allowed to give that such
19 order.

20 THE COURT: A trade standard?

21 MR. DILLON-CAPPS: Uh, a compliance
22 standard that we're required to follow, they're
23 required to follow, too.

24 THE COURT: Okay. A compliance
25 standard, a compliance standard issued by who, by a

1 trade organization?

2 MR. DILLON-CAPPS: A SEC contract, and
3 the FTC rule that allows them jurisdiction over, erm,
4 the matters of consumer identity, protected data.

5 I do actually have stuff I just --

6 THE COURT: So you're unwilling to
7 comply with the Court's order?

8 MR. DILLON-CAPPS: Not unwilling, it's a
9 misrepresentation. I --

10 THE COURT: No, I'm just asking --
11 answer my question. You have Judge DeSimone's order,
12 are you going to comply with the order?

13 MR. DILLON-CAPPS: As long as it doesn't
14 violate any federal laws or -- or contracts that
15 we're bound to, erm, yes.

16 THE COURT: We're not -- it's not --
17 you're not the "we". The "we" here is your employer.

18 MR. DILLON-CAPPS: Sure. If I don't
19 have to --

20 THE COURT: You're -- you're an
21 employee, I mean, I don't -- I think you're missing
22 that, I'm not trying to step -- I want to give you
23 opportunity to talk to me and explain your position,
24 but I think the -- what I'm missing here is the "we"
25 here, because your employer is the owner of this

1 computer system, of this IT system, correct?

2 MR. DILLON-CAPPS: Yes.

3 THE COURT: Okay. So, there's no "we"
4 here, it's them. You're an employee.

5 MR. DILLON-CAPPS: Yes. And yeah --

6 THE COURT: Okay. And so if they -- if
7 they're doing something that you think is
8 noncompliant, that's on them, that's not -- what
9 concern of that is your's?

10 MR. DILLON-CAPPS: Oh, because I'm the
11 one who actually, uh, it's my name on the paperwork
12 that like assumes and affirms that like we're
13 compliant. And I'm the one that --

14 THE COURT: Well, they could --

15 MR. DILLON-CAPPS: -- I'm the one in
16 charge of the compliance for --

17 THE COURT: Who do you -- who do you --

18 MR. DILLON-CAPPS: -- our company.

19 THE COURT: -- have to certify that
20 compliance to?

21 MR. DILLON-CAPPS: Erm, we certify it
22 with Trustwave who is --

23 THE COURT: Which is what?

24 MR. DILLON-CAPPS: Erm, oh, they're the
25 actual accessors.

1 THE COURT: Okay. They're not the
2 federal government?

3 MR. DILLON-CAPPS: No.

4 THE COURT: It's --

5 MR. DILLON-CAPPS: It is the federal
6 government, our SEC contract that is mandated, in
7 addition to our ABC processor, uh, master agreement,
8 in addition to the FTC ruling, all three of them
9 combined actually say that they have to do it, and
10 I'm doing --

11 THE COURT: So your -- your contention
12 is simply giving back access to your employer
13 violates federal law?

14 MR. DILLON-CAPPS: No, no. I'm saying
15 that the way that they've mandated it to be done is
16 the issue, and I provided many opportunities to give
17 it to them, including, like I said, the one way that
18 I found to give Justin Drummond, on Monday, if he met
19 with me.

20 THE COURT: Which is what? What --
21 well, why does he have to meet with you, why can't
22 you just give him back access?

23 MR. DILLON-CAPPS: Erm, because in order
24 to give someone access to the system, erm, the
25 there's two ways to do this. One, their job role

1 would have to, erm, give them some sort of task or
2 duty that would account for --

3 THE COURT: According to who?

4 MR. DILLON-CAPPS: -- this. erm, lease
5 privilege, which is in the -- the, P, uh, the PCI
6 compliance, which we're required to follow.

7 THE COURT: All right. What else do you
8 want to tell me on this issue of why you haven't
9 complied with the order?

10 MR. DILLON-CAPPS: So that's one way
11 that we could have resolved this issue. But there's
12 no way to even justify executive to needing the
13 privilege that they need, it's -- it's ludicrous.

14 Erm, it's a technical matter.

15 THE COURT: Let me ask -- let me ask,
16 erm, Mr. Brennen this, is -- is there, uh, I'm not
17 saying that what he's -- what -- if his argument has
18 any, uh, validity or not, but is there some -- is
19 there some workaround here for him to give access
20 back in -- in some way that, erm, takes him out of it
21 so that he's not, to the extent that he has concerns
22 about, uh, certifying compliance or being on the
23 hook; is there some -- there's not some workaround
24 here, other -- and I'm just asking, I'm trying to
25 understand.

1 MR. BRENNEN: Yeah. Erm, we have been
2 very clear about the steps he needs to take.

3 THE COURT: Which -- explain them to me,
4 just in, uh, in all --

5 MR. BRENNEN: Sure.

6 THE COURT: I'll -- I'll cite, uh, uh, I
7 hate to use it, call for a reference sometimes, but,
8 erm, my former colleague Judge King used to say,
9 quoting the movie Philadelphia, uh, explain it to me
10 as if I'm, uh, it changed every, as if -- as if I'm a
11 second grader, or whatever, because this is an IT
12 issue, so explain to me in baby steps, I guess what
13 --

14 MR. BRENNEN: Well, those are the only
15 steps that I know, your Honor, so --

16 THE COURT: Okay.

17 MR. BRENNEN: -- I'll do the best I can.

18 But, uh, I can do a couple of things
19 here, one, we have our -- a proposed order for the
20 preliminary injunction, which lays out the steps in
21 it. I can hand that up.

22 THE COURT: Has he seen it?

23 MR. BRENNEN: He has not seen it.

24 THE COURT: Do you want to show it to
25 him to see whether he --

1 MR. BRENNEN: Sure.

2 THE COURT: -- can comply with it?

3 MR. BRENNEN: Steps are the same steps
4 that I e-mailed you a couple of times. And I have
5 the same -- here's -- here's my, uh --

6 MR. DILLON-CAPPS: Yes, I can defend
7 every point of this.

8 MR. BRENNEN: Uh, I've got a, erm, I got
9 an e-mail from, uh, the defendant on late, uh,
10 evening of June 17th, the same day as the TRO was
11 entered, asking how can he comply with the TRO.

12 MR. DILLON-CAPPS: Hmm.

13 MR. BRENNEN: And so, I wrote to him at
14 8:39 a.m., the next morning, erm, that while we -- we
15 know that he knows the steps that he has to take, and
16 we give him four steps to take.

17 And one was to create an account in
18 Ohana's, uh, Microsoft 365 tenant, for
19 Pleador@Ohanagp.com.

20 THE COURT: Okay. What's the problem
21 with that, with that one step?

22 MR. DILLON-CAPPS: So --

23 THE COURT: What's the problem with that
24 one step, creating --

25 MR. DILLON-CAPPS: They --

1 THE COURT: -- creating an account?

2 MR. DILLON-CAPPS: They've not actually,
3 first of all, I'm not sure --

4 THE COURT: What's the problem with --
5 answer my question, sir, what's the problem with that
6 one step?

7 MR. DILLON-CAPPS: I don't know why they
8 need access.

9 THE COURT: That's -- what's the problem
10 -- you're not answering the Court's question.

11 MR. DILLON-CAPPS: That is actually the
12 standard, at least privilege is identified by you
13 telling me what is needed and then I --

14 THE COURT: We're going to take this one
15 step at a time. The first is, that you create an
16 account, is there any issue with creating an account?

17 MR. DILLON-CAPPS: Erm, there's already
18 accounts created.

19 THE COURT: What's the problem with
20 creating the account as they've asked?

21 MR. DILLON-CAPPS: Logistically was my
22 statement, how do I do this when I can't enter the
23 acc -- the system?

24 THE COURT: Answer my -- what is the
25 problem, let's take this one step at a time.

1 Is there any -- do you contend that it
2 violates any federal regulation, law, or other
3 standard that puts you at risk in creating a
4 Microsoft account for this individual on the Ohana
5 server, I guess, is that right, under their domain?

6 MS. HOFFBERGER: Yeah.

7 MR. DILLON-CAPPS: I think the more
8 accurate thing would be to say the creation of the
9 account, but never giving any access to them, it
10 already exists.

11 THE COURT: You're not answering the
12 Court's question.

13 MR. DILLON-CAPPS: No, it's already
14 existing. It was created in advance.

15 THE COURT: Does it violate -- does it
16 violate any -- do you contend it violates any federal
17 regulation or statute, or rule in creating -- read
18 -- read it again, counsel.

19 MR. DILLON-CAPPS: I honestly, your
20 Honor, I would have to take time to like look at
21 everything that --

22 THE COURT: Well, you don't have time.

23 MR. DILLON-CAPPS: -- to --

24 THE COURT: You were -- you -- you're
25 here for a show cause today, that's what we're here

1 for.

2 MR. DILLON-CAPPS: Off the top of my
3 head, I can't think of a reason why it is a problem
4 to create the account.

5 THE COURT: Okay. What's the second
6 step?

7 MR. BRENNEN: Add the account into the
8 global administrator's group and send the password to
9 Pleadora@hartmanadvosos.com, via secure e-mail.

10 If you do not have access to a secure
11 e-mail, you may send the password to me via text at
12 my text number, which I gave.

13 THE COURT: And -- and who was that that
14 was the author of that?

15 MR. BRENNEN: Me, Robert Brennen.

16 THE COURT: You, okay.

17 What's the problem with that?

18 MR. DILLON-CAPPS: One, one there's no
19 such thing as a group administrator or global
20 administrator group.

21 THE COURT: Well, he has a text, why
22 can't you send him the pass -- send counsel the
23 password?

24 MR. DILLON-CAPPS: Erm, well, if I were
25 to send the password to him, that would be giving

1 access to an account that's not his.

2 THE COURT: What concern of that is
3 your's? Why isn't that Ohana's concern? They --
4 they've -- he's their attorney, they've authorized
5 him to do that.

6 MR. DILLON-CAPPS: It would have to be
7 Mr. Leadore that would authorize it. And I've asked
8 to speak to Mr. Leadore a couple times and he's --

9 THE COURT: Who's Mr. Leadore?

10 MR. DILLON-CAPPS: -- not responded to
11 --

12 THE COURT: Who is Mr. Leadore?

13 MR. DILLON-CAPPS: Their individual that
14 they've named.

15 MR. BRENNEN: He's a consultant with,
16 uh --

17 THE COURT: Okay. A consultant?

18 MR. DILLON-CAPPS: Mm-hmm.

19 MR. BRENNEN: Hartman Executive
20 Advisors.

21 THE COURT: All right.

22 MR. DILLON-CAPPS: I've e-mailed him
23 multiple times, he's never responded.

24 THE COURT: So you refuse to send the
25 pass -- so there's a password that would grant Ohana

1 back access to its own account that you're
2 refusing --

3 MR. DILLON-CAPPS: They have access to
4 their account.

5 MR. BRENNEN: Global admin access.

6 MR. DILLON-CAPPS: And that is not a
7 defining factor, in fact, they have other
8 administrators already.

9 THE COURT: Why do you think you have a
10 right to the global access -- admin access?

11 MR. DILLON-CAPPS: I -- I do not. In
12 fact, I have documents showing that I have been
13 trying to give it away and giving other people
14 access.

15 THE COURT: Give it away. They want it.
16 You can resolve this whole thing now. You can
17 resolve the contempt issue right now if you just give
18 him the --

19 MR. DILLON-CAPPS: As long as they do it
20 in a way that like meets --

21 THE COURT: You have no right to -- you
22 have no right to insist on --

23 MR. DILLON-CAPPS: I have no right to
24 not do it.

25 THE COURT: -- your terms.

1 MR. DILLON-CAPPS: I have no right to
2 give it to someone and -- and violate the thing. I
3 have no right to do that.

4 THE COURT: Well, you may end up in
5 contempt of Court.

6 MR. DILLON-CAPPS: Well, is -- is it
7 unreasonable for me to follow --

8 THE COURT: Sir, this is --

9 MR. DILLON-CAPPS: -- the law?

10 THE COURT: You haven't cited any law to
11 me, that you'd be violating.

12 MR. DILLON-CAPPS: Hmm, sorry. I
13 actually, erm --

14 THE COURT: I'm not trying to argue with
15 you but --

16 MR. DILLON-CAPPS: Oh, I understand, I
17 --

18 THE COURT: -- just, you know, you have
19 to understand --

20 MR. DILLON-CAPPS: -- I -- I just want
21 an opportunity --

22 THE COURT: -- you're -- you're in
23 violation of a court order right now, and we're here
24 on a contempt proceeding.

25 MR. DILLON-CAPPS: For sure. So, uh --

1 THE COURT: And this can be easily, it
2 appears to the Court that this can be very easily
3 resolved here and now in a matter of seconds, if you
4 comply with the order.

5 MR. DILLON-CAPPS: For sure.

6 THE COURT: And I haven't heard any
7 reason why --

8 MR. DILLON-CAPPS: At the --

9 THE COURT: -- you -- to be honest at
10 this point, I haven't heard a valid reason as to why
11 you're not complying.

12 MR. DILLON-CAPPS: It's a complex matter
13 and I -- I -- it's hard to explain in simple terms.
14 But the Rule, I looked up, is FTC's safeguard rule.

15 THE COURT: You're telling me -- what
16 else? That means nothing to me.

17 MR. DILLON-CAPPS: Oh, well, erm in the
18 case of *FTC versus Wyndham Worldwide Corp.*, uh, they
19 established that violations of these regulations fall
20 squarely under federal restrictions.

21 THE COURT: What regulation? What
22 regulation would that violate?

23 MR. DILLON-CAPPS: Erm, it's the
24 regulation that is protecting the data, and the
25 standard that which applies is how we do that.

1 THE COURT: Doesn't that -- but doesn't
2 -- doesn't that govern the conduct, to the extent
3 there is even any regulation, and I don't have it
4 before me, doesn't that --

5 MR. DILLON-CAPPS: I -- I --

6 THE COURT: -- doesn't that govern the
7 conduct of the company?

8 MR. DILLON-CAPPS: Oh, no, it actually
9 governs me more than the company. And in my --

10 THE COURT: Show me -- show me why --
11 show me some case law or -- or regulation or statute
12 that says that this -- that that -- that you would be
13 at risk complying, providing the password to counsel.

14 MR. DILLON-CAPPS: Sure. I have it.
15 Can I take a moment?

16 THE COURT: Sure.

17 MR. DILLON-CAPPS: Okay. Erm, is it
18 possible that my wife could help? Because she was
19 actually helping me staple some of this up. She
20 might be able to help me locate that specific
21 document? I'm sorry.

22 THE COURT: Well, I'll give you -- I'll
23 go off the record for five minutes, you can go out in
24 the hallway and consult with her.

25 MR. DILLON-CAPPS: Oh, no, I mean, she's

1 right here. She can just help me like go through
2 this paperwork.

3 THE COURT: Well, she's not -- is she a
4 licensed attorney?

5 MR. DILLON-CAPPS: She is not.

6 THE COURT: I mean, she can help you go
7 through paperwork. If you want to take a break and
8 go back to the -- go back and try to find it, that's
9 fine, I'll go off the record for a couple of minutes
10 while you locate that.

11 MR. DILLON-CAPPS: Okay. Do I have to
12 leave this spot?

13 THE COURT: No, you can leave things
14 there.

15 MR. DILLON-CAPPS: Okay.

16 THE COURT: But if you want private --
17 if you want to go out in the hallway and talk to her
18 or --

19 MR. DILLON-CAPPS: Oh, I don't think
20 that's the issue.

21 Erm, do you have any issue with that.

22 MS. DILLON-CAPPS: No, I have no issue.

23 MR. DILLON-CAPPS: She, yes --

24 MS. DILLON-CAPPS: (Unintelligible).

25 MR. DILLON-CAPPS: Thank you.

1 THE COURT: You can come up, you can't
2 speak. I mean, you're not an attorney, so you can't
3 advise --

4 MS. DILLON-CAPPS: (Unintelligible).

5 THE COURT: I mean, you can't -- you
6 can't advocate on his behalf, I guess I should say.

7 MS. DILLON-CAPPS: I won't.

8 MR. DILLON-CAPPS: So, uh, this is the,
9 uh, court case of Federal Trading Commission Wyndham
10 Worldwide, with the material facts on, hmm, I will
11 need a moment to get a page number.

12 But this case it said -- establishes,
13 and I have the Court's opinion here, establishes,
14 erm, that the FTC has ruling over the space.

15 THE COURT: That -- that doesn't answer
16 the question. How does that --

17 MR. DILLON-CAPPS: Oh.

18 THE COURT: -- how does that -- how does
19 that put you at risk by giving back your employer,
20 uh, the global access rights?

21 MR. DILLON-CAPPS: Hmm, so we share, I'm
22 sorry, they share, erm, the privileges of processing
23 their payments through Planet Fitness global, uh,
24 worldwide --

25 THE COURT: Okay.

1 MR. DILLON-CAPPS: -- as franchisor.

2 Uh, it's not actually their --

3 THE COURT: Why is that your concern?

4 MR. DILLON-CAPPS: Because they have
5 entrusted me with this.

6 THE COURT: Not anymore. They've taken
7 that authority.

8 MR. DILLON-CAPPS: No, no, Planet
9 Fitness.

10 THE COURT: They're saying now you --
11 you have no -- you no longer have authority to do --

12 MR. DILLON-CAPPS: Hmm.

13 THE COURT: -- to keep this password.
14 They've taken that authority away from you.

15 MR. DILLON-CAPPS: So the authority is
16 actually granted --

17 THE COURT: So -- so why -- so why, in
18 fact, why doesn't that relieve you from any liability
19 because you've been relieved from that
20 responsibility?

21 MR. DILLON-CAPPS: Because the -- the
22 duty is given to me by the franchisor.

23 THE COURT: What franchise order?

24 MR. DILLON-CAPPS: No, franchisor, like
25 the Planet Fitness, themselves.

1 THE COURT: It's given -- you have
2 something in writing that gives a duty specifically
3 to you?

4 MR. DILLON-CAPPS: Erm, technically,
5 yes. I mean --

6 THE COURT: No, not technically. Tell
7 me -- show me --

8 MR. DILLON-CAPPS: Oh.

9 THE COURT: -- show me where you have
10 some --

11 MR. DILLON-CAPPS: I am actually --

12 THE COURT: -- personal responsibility
13 to the franchisor Planet -- Planet Fitness.

14 MR. DILLON-CAPPS: That's -- that's
15 actually a really great question. So the two things
16 that they would have to -- that Justin would have to
17 do, two things, one of them I would have taken
18 personally (unintelligible) for, one is they have to
19 show knowledge of the standard, the second was the
20 responsibility for it, 'cause that's actually part of
21 the standard --

22 THE COURT: Okay.

23 MR. DILLON-CAPPS: -- is you have to be
24 responsible for --

25 THE COURT: Would you -- would you

1 provide the passwords if they indemnified --

2 MR. DILLON-CAPPS: -- the environment.

3 THE COURT: -- you from any, uh --

4 MR. DILLON-CAPPS: If Planet Fitness --

5 THE COURT: -- liability concerning --

6 MR. DILLON-CAPPS: -- franchisor

7 indemnified me, yes. I cannot see --

8 THE COURT: No, from Ohana, if Ohana

9 they're the plaintiff here.

10 MR. DILLON-CAPPS: Well, they would have

11 to be the people that actually are authorized to do

12 that. They're not. And anyway --

13 THE COURT: So the answer to my question

14 is, no, you wouldn't accept --

15 MR. DILLON-CAPPS: No, I'm saying --

16 THE COURT: -- indemnification from the

17 plaintiff --

18 MR. DILLON-CAPPS: They're not.

19 THE COURT: -- of any --

20 MR. DILLON-CAPPS: I'm saying that

21 they're --

22 THE COURT: I'm not sure that they would

23 offer it, I'm just, again, asking.

24 MR. DILLON-CAPPS: I'm saying that they

25 don't have that power to do that. They've not been

1 given that right by --

2 THE COURT: They don't have the power to
3 indemnify you?

4 MR. DILLON-CAPPS: Hmm, no.

5 THE COURT: All right.

6 MR. DILLON-CAPPS: But, no. I mean, it
7 really would have to be the franchisor.

8 THE COURT: All right. Well, this is
9 your opportunity now, so I'm going to give you -- I'm
10 going to give you ten minutes, and you can provide to
11 me any authority that -- that you says prohibits
12 enforcement of that order.

13 MR. DILLON-CAPPS: Well --

14 THE COURT: Okay. I'm --

15 MR. DILLON-CAPPS: Okay.

16 THE COURT: -- going to give you ten
17 minutes.

18 (Whereupon, courtroom audio was turned
19 off at 9:46:40 a.m.)

20 (Whereupon, proceedings resumed at 10:01
21 a.m.)

22 THE COURT: All right. The Court will
23 recall the case of Ohana Growth Partners, LLC versus
24 Ryan Dillon-Capps, C-03-CV-24-002264.

25 All right. Mr. Dillon-Capps, erm, I

1 know I was interrupting you quite a bit when I was
2 out on the bench earlier, uh, I was really just
3 trying to get to the bottom of kind of where we are
4 and why, erm, and what your position is, and, uh, and
5 I was asking you some questions.

6 And I think at times the Court was
7 getting frustrated, to be honest with you, that you
8 weren't being responsive to my questions, and
9 instead, uh, just telling me what you wanted to tell
10 me, but, erm, we are here on the contempt hearing.

11 I'm going to give you, I've given you
12 some time --

13 MR. DILLON-CAPPS: Mm-hmm.

14 THE COURT: -- to, uh, to get your legal
15 authorities together. Erm, I'm going to let -- I'm
16 going to give you a fair opportunity to tell me what
17 you want to tell me.

18 MR. DILLON-CAPPS: Mm-hmm.

19 THE COURT: Tell me why you don't think
20 that I should hold you in contempt for violation of
21 Judge DeSimone's order, okay.

22 MR. DILLON-CAPPS: Okay.

23 THE COURT: So you're still under oath.

24 MR. DILLON-CAPPS: Thank you.

25 Erm, it sounds like you got a little,

1 I'm so sorry, that I was frustrated, too.

2 Erm, if I have one argument to make it's
3 this. They don't -- the case doesn't have
4 jurisdiction.

5 Erm, FMLA regulations say that, erm, if
6 I can get exact -- but, basically, what they say is
7 once I have asserted that I have my FMLA time in
8 place, which I did at 7 o'clock in the morning, when
9 they demanded that I work at 9, erm, and later had a
10 cease and desist, and later had default (phonetic) to
11 cease and desist.

12 Erm, all of the actions throughout the
13 day tell a story where I was suspended, not for the
14 thing they claim, but truly suspended because they
15 were tired of like what I -- what I -- the material,
16 the material is that the law says that it's the
17 burden of the employer to establish that it wasn't an
18 FMLA thing, not that it's assumed that I have to
19 prove it.

20 And until it's proven, a TRO and an
21 injunction actually cannot occur, erm, that's
22 prohibited in federal.

23 And, erm, and I will be happy to send
24 you all the stuff in a much better fashion
25 immediately upon leaving, I just I'm sorry for being

1 disorganized.

2 So, I can articulate better the whole
3 reason of FMLA, but that's essentially the FMLA
4 piece.

5 They -- they can't do anything.

6 And I do have an FMLA case filed with,
7 erm, the Department of Labor, it is being reviewed
8 right now.

9 Second, erm, we have, erm, is it okay if
10 I combine SEC and FTC, 'cause my -- those things in
11 my head are jumbled?

12 Erm, so, first off, establishing that
13 they actually have an agreement.

14 So, this purchaser agreement, which was
15 last updated in June of this year, erm, establishes,
16 it's the purchase agreement dated June of this year,
17 in which, erm, the franchisor, the master issuer,
18 actually agrees with the SEC that under this contract
19 that they will apply PCI standards, it literally says
20 PCI.

21 In the, erm, ABC contract master terms,
22 which is the, uh, processor agreement, it also
23 reaffirms that they are using PCI standards to meet
24 the legal necessity, that is found in the standards
25 for safeguarding consumer information.

1 And this is -- the connection, is that
2 this doesn't says PCI, this says you have to follow
3 standards that accomplishes the task as is defined in
4 here. PCI is how we accomplish in FTC erm, rule.

5 Erm, on the SEC side, you, I'm sorry, 15
6 USC 45, is about the unfair methods of competition,
7 unlawful prevention of commission. Essentially, uh,
8 it's an extension of the stop guard act.

9 And in this case, it actually applies
10 to, erm, not allowing -- it's -- it's -- it's
11 literally used to in a couple of cases, okay.

12 So the cases it's used, 'cause I don't
13 want to speak when I'm not a lawyer, I want the law
14 to speak.

15 So in Fed Trade Commission, Walmart, in
16 Matters of Lab, Inc., a corporation, against, I don't
17 remember, erm, I think it actually went to
18 Commission, like, yeah, they went that far. And
19 Federal Trade Commission, Wyndham Worldwide, that's
20 three great examples where the Court ruled in these
21 situation that it is absolutely a federal
22 jurisdictional issue, I cannot remember what it is.

23 But Maryland has, they already
24 established an appellate court case that argues, erm,
25 essentially, if something is a state law or a federal

1 law, it is a violation of the law, and as such it
2 needs to be treated as illegal and lawful (sic).

3 So, for these reasons I say, erm, this
4 is what the case is about, however, you slice and
5 dice it, it's federal, it's federal, it's federal, so
6 there's no jurisdiction.

7 Secondly, if -- if you wanted to narrow
8 it down to some bits and pieces, I can articulate
9 every single fact.

10 In fact, Justin Drummond's affidavit of
11 -- of 2C, I'm sorry 1A is his, no, 2A, 2A, is his
12 erm, exhibit, Exhibit 2A, contradicts the facts of
13 Exhibit 1A.

14 Erm, Exhibit 1B, erm, erm, 1B or 1C is
15 my contract, I might have flipped them. Oh, sorry,
16 1C is not equal to 2A, that is the -- the e-mail, the
17 e-mail you can see in Justin has the additional
18 e-mail that is excluded. Justin has the correct one,
19 Rich Hartman does not.

20 Erm, Rich Hartman, also, uh, in his
21 affidavit, is missing two of my addendums, making it
22 an incomplete piece.

23 The, erm, however, Rich Hartman's other
24 exhibit is missing the 2:05 e-mail, notably, the very
25 times to which Mr. Hartman says he lost access, that

1 is fundamentally not true.

2 Erm, the order of events that day was, I
3 was fearful for my life, and here's why, when --
4 after receiving the 2:05, which follows the other
5 cease and desist, both of them are cease and desist,
6 basically, which followed the FMLA claim, or
7 notification of time off, that then followed by,
8 let's call it what it is, a six hour demand letter to
9 work or else.

10 And all I was saying is, allow me my
11 federally protected time, and then, I asserted my
12 federally protected right.

13 They, 15 minutes after that, he serves
14 my IT coordinator a leave of absence, and while
15 normally I shouldn't say this, but like
16 (unintelligible) affidavit, he -- he -- Rich Hartman
17 handed the letter to him and said, it's like a paid
18 vacation.

19 Erm, I then responded to find out if my
20 IT -- if my (unintelligible) Ellis was safe and sent
21 her home.

22 I was under the impression that he was
23 reacting irrationally, and all the facts support
24 this, because even if Justin Drummond's affidavit,
25 you'll see that he says Rich Hartman lost access to

1 his team's account at 5, so that is actually closer
2 to the accurate time of when I signalled (phonetic)
3 his account.

4 And I have a picture somewhere, or I can
5 give to you, that shows clearly, erm, there's a lot
6 of evidence, Justin Drummond is a Viva goals admin
7 (phonetic), we have an entire Help Desk team that are
8 user admins, exchange admins. We're fully
9 functional. Their -- their harm is not established,
10 that's -- it's a lie.

11 Erm, their claim, they claim that they
12 had no admin access. They don't even understand what
13 a global administrator is and what it does, more
14 accurately, I could describe the global administrator
15 role as one that can give or take away rights from
16 other people in otherwise inaccessible means. And is
17 able to, erm, hmm, escalate, or I can't think of the
18 right word right now, but can elevate its permission
19 to a level that is beyond its normal self, and do
20 things that even itself cannot normally do.

21 But, it is not designed, and, in fact, I
22 have proof where I and other people who have been
23 through global (phonetic) net shares, we actually had
24 to go give ourselves the correct role to actually do
25 the thing we want.

1 So that's more in the fact that there's
2 actually no harm already done.

3 And, erm, I mean, I could literally -- I
4 can go through piece by piece, if you name -- just
5 tell me another claim that they made, please, anyone,
6 'cause I -- I can literally tell you how it's false
7 or misleading.

8 They have no case. They have no
9 material (phonetic) this is retaliation pure and
10 simple.

11 THE COURT: All right. Mr. Brennen?

12 MR. BRENNEN: Well, your Honor, erm,
13 I've not seen any of the citations that the defendant
14 has -- has put forth today.

15 I -- I see no basis for the
16 jurisdictional argument. The three claims that we
17 brought against him in the case are all, well, one is
18 a breach of contract under Maryland common law,
19 another is common law, Maryland common law breach of
20 employer -- employee's duty of loyalty, and the third
21 is via a civil action brought under a Maryland
22 criminal statute.

23 Erm, my colleague, uh, Ms. Hoffberger is
24 -- is more than prepared to address the -- the why
25 FMLA has nothing to do, it doesn't rise to a defense

1 to any of this.

2 The facts, which are established in the
3 record that's already before the Court, and I don't
4 think there's any dispute of it is, this concept that
5 the -- a demand was made to, uh, the defendant on
6 June 13th, an hour after he'd asked for -- for FMLA
7 leave, uh, and we're forcing him to work, ignores the
8 fact that he's been asked to do this going to at
9 least May 20th, when he terminated the only -- the
10 only other admin access, uh, for the -- the
11 consultant Ryan Brooks from, erm, Baltimore
12 Consulting.

13 So this was not the first time he'd been
14 asked, uh, this was multiple times he'd been asked.
15 There's no dispute about that.

16 So the -- the concept that -- that the
17 question, erm, directive from, erm, various, uh,
18 members of senior management at Ohana to the
19 defendant, uh, is in retaliation for his request on
20 June 13th to take additional leave is completely base
21 less.

22 MR. DILLON-CAPPS: Hmm, I can respond to
23 all of those with details, and I can provide evidence
24 in --

25 THE COURT: Sir, I gave you your chance

1 to talk.

2 MR. DILLON-CAPPS: Oh, sorry. Sorry.

3 MR. BRENNEN: So with -- with respect to
4 the irreparable harm, uh, we heard acknowledgment
5 that he did take action with respect to the Vice
6 President of -- of People and Culture, which is
7 essentially equivalent to human resources for the
8 company.

9 Uh, he's prepared to testify consistent
10 with his affidavit, that he was unable to access his
11 company e-mail shortly after his exchange on -- on
12 June 13th. And then, on at 5:05 was unable to access
13 most of the system, has been locked out until very
14 recently.

15 Erm, and, uh, in addition to that, erm,
16 you know, so we have that act.

17 We have a, uh, a party who has shown a,
18 uh, an unabashed willingness to defy the directives
19 of his employer with respect to critical systems.

20 Uh, we have someone who has, uh,
21 repeatedly asserted, and I think it's in the June
22 18th correspondence to the Court, that he and -- and
23 the reason for the FMLA request is that he, uh,
24 claimed -- he suffers from some post-traumatic
25 stress, which at times renders him, you know, not

1 functional, uh, in which case the only person with
2 this access would -- would be inaccessible 'cause
3 they wouldn't have -- they wouldn't be functional.

4 Erm, then the tremendous, and I could
5 -- we have affidavit testimony and, I have all three
6 of our affiants are here, uh, including Mr. Romes,
7 uh, who's in with -- in from Minneapolis, to -- to
8 provide expert testimony with respect to the fact
9 that the PCI, DSS, uh, does not provide any obstacle
10 to compliance with either the employer directors or
11 the Court order, which is what we are focused on
12 right now, and -- and happy to -- to do so.

13 But I don't think we've seen anything,
14 uh, we certainly haven't seen a case that says, if he
15 does this, he's going to be either subject to
16 criminal liability or any civil liability.

17 We -- we were able to pull up the *FTC*
18 *versus Wyndham* case on Ms. Hoffberger's cell phone,
19 and it appears that that case involves --

20 THE COURT: Is -- is that 799 --

21 MR. BRENNEN: Action --

22 THE COURT: -- F.3d 236?

23 MS. HOFFBERGER: Yes, your Honor.

24 THE COURT: Okay.

25 MR. BRENNEN: Seems to involve a

1 situation where the Wyndham hotel people had not
2 taken sufficient steps to protect consumer data,
3 which was then accessed by hackers, uh, third parties
4 with -- without any connection to the company, uh,
5 and they held that Wyndham was had some liability
6 there.

7 There's nothing in that opinion that
8 says the IT staff at Wyndham that failed to properly
9 protect the consumer data had any personal liability
10 to the FT -- to the SEC.

11 THE COURT: Might the defendant be
12 considered a hacker at this point, given his direct
13 -- his failure to follow directives of his employer?

14 MR. BRENNEN: We certainly believe that
15 at this point, yes, that he would be -- his access
16 other than to take the steps that he's been ordered
17 by the Court to do, and asked by his employer to
18 do --

19 THE COURT: Yeah.

20 MR. BRENNEN: -- would be unauthorized
21 access.

22 THE COURT: I mean, I'm -- I -- this is
23 all out of context, but I'm reading parts of the
24 *Wyndham* case, and they talk about, and, of course,
25 this was also 2015, so it's nine years old, erm, but

1 they talk about an FTC guidebook, erm, one of which
2 talks about setting access controls, and to allow
3 only trusted employees with a legitimate business
4 need to access the network.

5 So what -- I'm -- I'm having trouble
6 understanding what legitimate business needs --

7 MR. DILLON-CAPPS: That -- that
8 statement you just read is actually the principal of
9 this privilege, and is the basis --

10 THE COURT: Well, what legitimate
11 business need do you have to access --

12 MR. DILLON-CAPPS: No, no.

13 THE COURT: -- this data?

14 What -- answer my question. What
15 legitimate business need --

16 MR. DILLON-CAPPS: I've not accessing --

17 THE COURT: What --

18 MR. DILLON-CAPPS: -- data. I'm not
19 accessing data.

20 THE COURT: No, but you have access.
21 You have an access control.

22 MR. DILLON-CAPPS: Hmm.

23 THE COURT: You have the -- answer my
24 question. Do you have any legitimate need to access
25 data?

1 MR. DILLON-CAPPS: Erm, I'm not -- I'm
2 not.

3 THE COURT: Given -- given your status
4 with the company right now?

5 MR. DILLON-CAPPS: I know, that's why I
6 haven't being doing it.

7 THE COURT: Okay. So why should you
8 have access? You're not -- you're not a -- you're
9 not at this point considered a trusted employee with
10 a legitimate business need to access the network?

11 MR. DILLON-CAPPS: I -- I don't have --
12 okay. There's technical terms in here that --

13 THE COURT: Answer my question.

14 MR. DILLON-CAPPS: -- I --

15 THE COURT: Do you have a legitimate
16 business need to access the network?

17 MR. DILLON-CAPPS: That's a false
18 statement to make.

19 THE COURT: No, answer --

20 MR. DILLON-CAPPS: Because I did tell
21 you.

22 THE COURT: That's a question, sir. I'm
23 not trying to argue with you, but answer the
24 question.

25 Do you have -- are you contending to me

1 that you have any legitimate business need to access
2 the network, if you do, I'm happy to hear about it.
3 I'm trying to give you your chance, but I want to
4 know if it's your contention that at this point,
5 given your status with the company, if you have any
6 legitimate business need to access the network?

7 MR. DILLON-CAPPS: My contention is I
8 don't have access right now.

9 MS. HOFFBERGER: Well --

10 THE COURT: You don't have access?

11 MR. DILLON-CAPPS: No.

12 THE COURT: You -- you don't have -- the
13 access controls aren't set to give you access?

14 MR. DILLON-CAPPS: I --

15 THE COURT: Then who does? Who has
16 access?

17 MR. DILLON-CAPPS: I do not have access
18 right now.

19 THE COURT: Who has -- answer my
20 question, who has access?

21 MR. DILLON-CAPPS: Erm, the people and
22 accounts that have it, like the Help Desk and stuff.

23 THE COURT: So they could just give the
24 information that Mr. Brennen needs to remove you?

25 MR. DILLON-CAPPS: Erm --

1 THE COURT: The people at the Help Desk?

2 MR. DILLON-CAPPS: If -- if they use --

3 THE COURT: And so you -- so the people
4 at the Help Desk have this access, but you're
5 unwilling to give it to their IT professionals and to
6 their attorney, who have asked for access; is that
7 -- is that your position?

8 MR. DILLON-CAPPS: My position is that
9 the access they've asked for is not an access that
10 exists in the way that they've described it. And --

11 THE COURT: Well, all right. But if
12 they're being imprecise, they're asking for -- at
13 this point Mr. Brennen just wants a password sent to
14 him by text.

15 MR. DILLON-CAPPS: I can't generate that
16 password.

17 THE COURT: Well, what can you do? Then
18 explain to me, technically, what you can do to comply
19 with the order.

20 MR. DILLON-CAPPS: Hmm.

21 THE COURT: Right now you're not in
22 compliance with an order.

23 MR. DILLON-CAPPS: Right.

24 THE COURT: I haven't heard any reason
25 -- I've heard your arguments, I'm just going to tell

1 you right now, that the Court disagrees.

2 The Court has jurisdiction over the
3 State court claims. The case hasn't, I'm not sure
4 that the -- it's not brought under federal law.

5 MR. DILLON-CAPPS: Okay.

6 THE COURT: So even if -- even if there
7 were -- hold on. Even if there were federal
8 defenses, I'm not sure the case is removable 'cause
9 it doesn't -- the complaint doesn't, on its face
10 state any federal claim, it hasn't been removed to
11 federal court.

12 The Court has jurisdiction over the
13 claim, so that's not an argument, I'm just telling
14 you right now.

15 Erm, and I haven't heard, as far as any
16 family law leave issue, if you contend that they're
17 violating the law, and I'm not sure I even need to
18 hear about that, but if they did, then if you have a
19 federal claim, assuming they're violating the law,
20 I'm making no such finding, fine, you can pursue that
21 claim either administratively or -- or by law.

22 You can go down to federal court and
23 file a -- a, if there is such a private cause of
24 action for violation of the FLMA (sic), you can do
25 that, that's not a defense to the, uh, claims here,

1 breach of contract and the breach of loyalty to your
2 employer.

3 MR. DILLON-CAPPS: It's -- it's a
4 prohibited act federally --

5 THE COURT: Okay. Then --

6 MR. DILLON-CAPPS: -- to do what they
7 did.

8 THE COURT: -- then you can pursue that.

9 MR. DILLON-CAPPS: And, we will, but --

10 THE COURT: Erm, the Court is not --

11 MR. DILLON-CAPPS: -- to answer your
12 question --

13 THE COURT: Hold on a second. The Court
14 is not your employer, and you are under a Court order
15 to do something, okay.

16 So -- so far, I'm just telling you, I've
17 heard all your arguments and I'm -- I don't think
18 that constitutes a defense to -- to the contempt --

19 MR. DILLON-CAPPS: I will --

20 THE COURT: -- at this point, so the
21 Court -- I mean the next thing I'm going to have to
22 consider, potentially, is -- is what the appropriate
23 remedy is in holding you in con -- is, you know, I
24 haven't yet, but I'm about to find you in contempt
25 for violation of Judge DeSimone's order. And then,

1 the next step will be what's the appropriate remedy.

2 MR. DILLON-CAPPS: Erm, I have tried
3 many times to do the thing that they want me to do,
4 many times.

5 THE COURT: Well, right now the
6 attorney's here, do what he wants to do, and this
7 case will probably be dismissed.

8 There would -- it seems to me that this
9 is a one, even though there is a Motion for
10 Preliminary Injunction here to follow the TRO, but,
11 uh, I don't know all the intricacies of this, but it
12 seems to me that if the appropriate password is
13 provided they would probably lock you out, and do
14 what they have to do, and that would be the end of
15 it.

16 And they could -- if they want to pursue
17 a damage claim against you they can still do that,
18 but as far as injunctive relief there would be no
19 need -- they would probably, if you text the password
20 or whatever Mr. Brennen needs, he probably would
21 dismiss the preliminary injunction.

22 MR. DILLON-CAPPS: I don't -- I don't
23 have the password.

24 MR. BRENNEN: Uh, your Honor, in fact,
25 one of the things we had offered to do, uh, was,

1 well, we asked that he consent, you're absolutely
2 right, it would obviate the need for the injunctive
3 relief compelling him to take the action, if he takes
4 the action, but we would still want preliminary
5 injunctive relief in terms of the relief enjoining
6 him from trying to or attempting any further access
7 pending the case to the system.

8 THE COURT: To basically hack it?

9 MR. BRENNEN: Correct.

10 MR. DILLON-CAPPS: No, I -- I have to
11 have access to do it, pure and simple.

12 THE COURT: Well, maybe but they're --
13 they're asking, I mean you could consent, again, if
14 you -- if you're saying you have no intention --
15 well, first of all, the first step is giving them the
16 access they need, are you willing to do that?

17 MR. DILLON-CAPPS: I have no ability at
18 this moment to do that.

19 THE COURT: Well, tell me what you need?

20 MR. DILLON-CAPPS: I would need --

21 THE COURT: Okay.

22 MR. DILLON-CAPPS: -- access to one of
23 the Break Glass accounts.

24 THE COURT: One of the what?

25 MR. DILLON-CAPPS: Break Glass accounts.

1 THE COURT: Break Glass accounts?

2 MR. DILLON-CAPPS: Yes.

3 THE COURT: Who has that?

4 MR. DILLON-CAPPS: I do not.

5 THE COURT: Well, you have -- who does?

6 MR. DILLON-CAPPS: I can find out.

7 THE COURT: You have your IT

8 professionals here, can you talk to them about what

9 they need.

10 UNKNOWN: He is our IT professional.

11 THE COURT: Well, (laughing).

12 MR. BRENNEN: (Laughing).

13 THE COURT: Well, I understand that, but

14 I mean, he's --

15 MR. BRENNEN: I have Mr. -- Mr. Romes

16 who is an expert in all these systems.

17 THE COURT: Okay. Why don't I hear --

18 why don't we put him under oath and he can tell me

19 what, uh, what the defendant needs -- what the

20 defendant could do.

21 MR. BRENNEN: Okay.

22 THE COURT: Come on up to the witness

23 stand.

24 RANDALL J. ROMES,

25 first duly sworn to tell the truth, the whole truth,

1 and nothing but the truth, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Thank you please be seated.

4 For the record please state and spell your first and
5 last name.

6 THE WITNESS: Randall J. Romes,

7 R-A-N-D-A-L-L, last name Romes, R-O-M-E-S.

8 THE CLERK: Thank you.

9 THE COURT: All right. You can proceed
10 Mr. Brennen.

11 MR. BRENNEN: Thank you.

12 DIRECT EXAMINATION

13 BY MR. BRENNEN:

14 Q Erm, Mr. Romes, are you employed?

15 A Yes.

16 Q And by whom?

17 A Clifton Larson Allen.

18 Q And what is Clifton Larson Allen?

19 A Clifton Larson Allen is the eighth
20 largest professional services CPA firm in the
21 country.

22 Q And what is your title with the CLA or
23 Clifton, do you mind I call it CLA?

24 A Call it CLA, yes, please.

25 Q Okay. What is your title with CLA?

1 A I'm a principal in the Cyber Security
2 Services Group.

3 Q And, uh, what, can you explain to the
4 Court what you do for the company in that capacity?

5 A Sure. We --

6 Q And how long you've been doing it?

7 A I -- I've been there for 27 years. We
8 help clients with, erm, IT and cyber security risk
9 assessments, audit compliance, erm, penetration
10 testing.

11 We do incident response and forensics.
12 Erm, we help with independent security advisory, and
13 we're also what's referred to as a PCI QSA firm,
14 qualified security assessment firm.

15 So we are accredited by the SSC, the
16 Security Standards Counsel, which is the trade group
17 that defines the framework for executing compliance
18 assessments for PCI compliance on an annual basis.

19 MR. BRENNEN: Your Honor, could I
20 approach with a copy of Exhibit A, it's the
21 biographical information, was -- this was Exhibit A
22 to his affidavit that was submitted yesterday and was
23 transmitted to the Court, and also to -- to opposing
24 counsel.

25 THE COURT: Okay.

1 MR. DILLON-CAPPS: I can see that he's
2 an expert. I --

3 MR. BRENNEN: (Unintelligible).

4 MR. DILLON-CAPPS: I absolutely would
5 give him access, instantly, right now.

6 THE COURT: Give him access now.

7 MR. DILLON-CAPPS: Yes, I would give
8 him --

9 THE COURT: Give him access now.

10 MR. DILLON-CAPPS: I would right now.

11 THE COURT: Give it -- give it to him
12 now.

13 MR. DILLON-CAPPS: I don't have it. I
14 literally don't have it on me.

15 THE COURT: Well, what do you have?
16 What do you need to do to get it?

17 MR. DILLON-CAPPS: Erm, well, we would
18 have to get one of the Break/fix accounts, his
19 tokens, to log -- to log in.

20 THE COURT: Well, why don't --

21 MR. DILLON-CAPPS: There's --

22 THE COURT: Is it worth having the
23 discuss -- you're willing to give it to him --

24 MR. DILLON-CAPPS: I can talk to him --

25 THE COURT: -- is what you're saying?

1 MR. DILLON-CAPPS: -- and he can confirm
2 that I'm telling the truth, and that it makes sense.

3 THE COURT: Okay. Fine. Then why don't
4 we take a five minute break and you can --

5 MR. DILLON-CAPPS: I mean, I just -- I
6 can tell him right now.

7 THE COURT: Tell -- let me finish. Sir.

8 MR. BRENNEN: Your Honor, I -- I think
9 --

10 THE COURT: All right. Why don't we do
11 this on the record. Go ahead tell him -- tell him
12 what you think he needs to do.

13 BY MR. BRENNEN:

14 Q Mr. Romes, could you explain --

15 THE COURT: Let me hear from Mr. Romes
16 first, as to what --

17 MR. BRENNEN: Yeah.

18 THE COURT: -- what -- what he needs.

19 But --

20 MR. BRENNEN: You've heard --

21 THE COURT: But he -- you can see he's
22 qualified?

23 MR. DILLON-CAPPS: Yes.

24 THE COURT: You can see, it wouldn't --
25 giving him the password would not put you at risk?

1 MR. DILLON-CAPPS: No, it would not.

2 THE COURT: What?

3 MR. DILLON-CAPPS: It would not.

4 THE COURT: You agree with me?

5 MR. DILLON-CAPPS: A hundred percent.

6 THE COURT: Okay. So now, it's just

7 about how do we logistically accomplish this.

8 MR. DILLON-CAPPS: Exactly.

9 THE COURT: Okay. Let's figure that
10 out.

11 MR. DILLON-CAPPS: I -- I just need to
12 get to a security key that, erm, and then, get to a
13 password and give them to him. That's it.

14 He's -- he's -- he's -- he's more than
15 knowledgeable and I --

16 THE COURT: All right. All right.
17 Break -- break that down, again. Let's -- let's
18 break this down to a second grader level for me.

19 MR. DILLON-CAPPS: Yeah.

20 THE COURT: So what -- what -- what is
21 -- what do you --

22 MR. DILLON-CAPPS: There's a key fob.

23 THE COURT: From --

24 MR. DILLON-CAPPS: There's a literal
25 Fidos key tag.

1 THE COURT: Who has -- it's a key fob,
2 like a physical key fob type of thing?

3 MR. DILLON-CAPPS: Yeah.

4 THE COURT: Who has that?

5 MR. DILLON-CAPPS: Erm, I do not have
6 the one that he (unintelligible).

7 THE COURT: Who has it?

8 MR. DILLON-CAPPS: I will find it.

9 THE COURT: Well, what does that mean?
10 Do you know where it is?

11 MR. DILLON-CAPPS: I -- I do know where
12 it's at.

13 THE COURT: Where is it?

14 MR. DILLON-CAPPS: Well, it's in an
15 envelope, and I have to find out --

16 THE COURT: It's where?

17 MR. DILLON-CAPPS: It's in a -- in an
18 envelope and I have to make sure --

19 THE COURT: What -- what is the
20 envelope?

21 MR. DILLON-CAPPS: I have to see if it's
22 been mailed out already. I have to find --

23 THE COURT: Where did you mail it to?

24 MR. DILLON-CAPPS: -- out
25 (unintelligible) receipt.

1 THE COURT: Who did you mail it to?

2 MR. DILLON-CAPPS: Erm, it should be
3 sent to, uh, Cello.

4 THE COURT: To who?

5 MR. DILLON-CAPPS: Because it was
6 intended -- to Cello, our Help Desk.

7 THE COURT: To your Help Desk?

8 MR. DILLON-CAPPS: Yes.

9 THE COURT: And when did you mail it?

10 MR. DILLON-CAPPS: I would have to
11 double check. I don't think it went out. I think it
12 went out --

13 THE COURT: And there's only one of
14 these key fobs?

15 MR. DILLON-CAPPS: That's one of them,
16 yeah.

17 THE COURT: Answer my question, sir.
18 You have a way of not answering my questions.

19 MR. DILLON-CAPPS: I'm sorry.

20 THE COURT: Is -- you said that one of
21 them, is there more than one?

22 MR. DILLON-CAPPS: Yes.

23 THE COURT: Who has the other ones?

24 MR. DILLON-CAPPS: Well --

25 THE COURT: Besides -- you have one that

1 you put in an envelope which you don't -- and -- and
2 -- have you mailed it or not?

3 MR. DILLON-CAPPS: I will find out. I
4 --

5 THE COURT: Well, that's a yes or no
6 question though.

7 MR. DILLON-CAPPS: I have spent a large
8 quantity of time since the incident, erm, not
9 remembering what's going on. I'm severely impacted
10 by PTSD right now.

11 THE COURT: All right. Okay. Well, I
12 -- I don't want to cause you anymore PTSD, that's why
13 I'm trying to get a resolution to this.

14 MR. DILLON-CAPPS: Sure.

15 THE COURT: Because this is -- this is
16 so simple to resolve, sir.

17 MR. DILLON-CAPPS: Right.

18 THE COURT: It's --

19 MR. DILLON-CAPPS: Can I just be given
20 an opportunity to -- 'cause he's qualified.

21 THE COURT: Well, who else -- who else
22 has the key -- how -- who else had -- has a key fob?

23 MR. DILLON-CAPPS: I can't answer that
24 question because I don't remember. I have to like go
25 at my home, look at my notes and find out what's

1 going on.

2 THE COURT: Would anyone else know?

3 MR. DILLON-CAPPS: No, because I mailed
4 them out, or I tried to.

5 THE COURT: Okay. What else -- so what
6 else -- and I'm going to ask the witness whether he
7 thinks that's -- what else is necessary in your view?

8 MR. DILLON-CAPPS: There's only two --
9 well, three problems, but, he's knowledgeable, check.
10 I don't have to -- he's QSA, I literally don't have
11 to do anything for that.

12 And then, he has to be responsible for
13 our environment so --

14 THE COURT: He what?

15 MR. DILLON-CAPPS: He has to be
16 responsible for the environment, so.

17 THE COURT: Well, that's -- that's not
18 something you have --

19 MR. DILLON-CAPPS: The admin --

20 THE COURT: -- I'm asking what you have
21 to do to give him access.

22 MR. DILLON-CAPPS: So --

23 THE COURT: What your contention is?

24 MR. DILLON-CAPPS: I -- I would
25 literally make an e-mail or a call to Planet Fitness

1 Headquarters, and have him added to our trust
2 (unintelligible) account. Reasonable. Very
3 reasonable. Like literally it would --

4 THE COURT: So both things are needed or
5 just, or just you need to make a call to Planet
6 Fitness Headquarters?

7 MR. DILLON-CAPPS: I mean --

8 THE COURT: And how do you know that
9 they would, that Planet Fitness would even listen to
10 you at this point?

11 MR. DILLON-CAPPS: Erm, I have no reason
12 to believe that they wouldn't.

13 THE COURT: All right. So is the first
14 -- is the key fob needed --

15 MR. DILLON-CAPPS: Yes.

16 THE COURT: -- yes or no?

17 MR. DILLON-CAPPS: Yes, because --

18 THE COURT: Okay.

19 MR. DILLON-CAPPS: -- he would need it
20 to actually log in. He would --

21 THE COURT: And then, the --

22 MR. DILLON-CAPPS: -- need that and the,
23 uh, password to the secondary e-mail account and the
24 password to the account itself.

25 THE COURT: The password to second?

1 MR. DILLON-CAPPS: Yes, 'cause that's
2 how (unintelligible).

3 THE COURT: Secondary.

4 MR. DILLON-CAPPS: -- for that.

5 THE COURT: I'm sorry, the password to
6 the secondary?

7 MR. DILLON-CAPPS: Account.

8 THE COURT: Account?

9 MR. DILLON-CAPPS: Mm-hmm.

10 THE COURT: Who has that?

11 MR. DILLON-CAPPS: It's with the e-mail
12 site. It's actually on --

13 THE COURT: Who has -- what?

14 MR. DILLON-CAPPS: It's together. It's
15 together, it's all together.

16 THE COURT: What -- to get -- it's
17 together with what? A password is a password, how is
18 that together with anything?

19 MR. DILLON-CAPPS: They're two -- both
20 passwords are together. I mean, they're written
21 down, not written, but like printed on a piece of
22 paper.

23 THE COURT: Printed on a piece of paper?

24 MR. DILLON-CAPPS: Yeah.

25 THE COURT: Where does that piece of

1 paper exist?

2 MR. DILLON-CAPPS: I will let you know
3 as soon as I get home and find it and find the papers
4 --

5 THE COURT: How about -- what I ordered
6 you to go home now and get it and bring it back?

7 MR. DILLON-CAPPS: Then I would do what
8 I can. I have not -- the misconception, your Honor,
9 is that I've been withholding something.

10 THE COURT: Well, you are.

11 MR. DILLON-CAPPS: I'm not withholding
12 anything. No, I have not.

13 THE COURT: All right. All right. Let
14 me hear from the witness --

15 MR. DILLON-CAPPS: I tried to give it to
16 Justin.

17 THE COURT: -- what -- All right.
18 Anything else that you think is needed, those three
19 things? You said find the key fob, call Planet
20 Fitness Headquarters.

21 MR. DILLON-CAPPS: Yeah.

22 THE COURT: Add him, and then -- and
23 then a password to a secondary account --

24 MR. DILLON-CAPPS: Yeah.

25 THE COURT: -- that you don't know where

1 that password is --

2 MR. DILLON-CAPPS: I --

3 THE COURT: -- somewhere?

4 MR. DILLON-CAPPS: -- I have stuff
5 written down because my memory is not great.

6 THE COURT: Okay. All right. Let me
7 hear from the witness.

8 What are the steps that you think --
9 what could he do to instantly give you access?

10 THE WITNESS: I -- I believe the
11 question is to crea -- create an account.

12 MR. DILLON-CAPPS: Which already exists.

13 THE COURT: Sir.

14 THE WITNESS: And --

15 THE COURT: Do not interrupt the
16 witness.

17 MR. DILLON-CAPPS: Sorry.

18 THE WITNESS: -- put that --

19 THE COURT: All right. Create an
20 account, meaning what? Tell me exactly what that
21 means.

22 THE WITNESS: Create an account for one
23 of the individuals, a User ID, and then --

24 THE COURT: For one of what -- what
25 individuals?

1 MR. DILLON-CAPPS: uh, Mr. Drummond,
2 somebody at Planet Fitness.

3 THE COURT: Okay. So, the witness, so
4 right now you're locked out of creating any kind of
5 an account on the system?

6 THE WITNESS: I don't have any access.

7 THE COURT: Well, I mean, no, Planet
8 Fitness, not Planet Fitness, but the plaintiff in the
9 case has no ability to create any Microsoft, erm, 365
10 account right now?

11 THE WITNESS: I -- I believe they do not
12 have the ability to create administrative privilege
13 accounts, which is --

14 THE COURT: Okay.

15 THE WITNESS: -- what is needed.

16 THE COURT: So create an administrative
17 privilege account?

18 MR. DILLON-CAPPS: Mm-hmm.

19 THE WITNESS: And then put it --

20 THE COURT: Which only the witness can
21 do?

22 THE WITNESS: I believe that's the case.

23 THE COURT: All right. Could he do, is
24 there -- is there like a computer here where he could
25 do that?

1 THE WITNESS: Uh, I can't answer that, I
2 don't know how --

3 THE COURT: All right.

4 THE WITNESS: -- the system is set up.

5 THE COURT: So, create an administrative
6 privilege account.

7 THE WITNESS: Create an account, give it
8 the appropriate permissions, put it in an admin
9 account, we're hearing the term "global admin", it's,
10 uh, --

11 THE COURT: Okay.

12 THE WITNESS: -- basically the
13 same thing. And then --

14 THE COURT: Give it a glob -- give it a
15 global admin --

16 THE WITNESS: Provide the --

17 THE COURT: -- admin permission?

18 THE WITNESS: Yep.

19 THE COURT: Okay. So create an account,
20 give it global admin permission, and what else?

21 THE WITNESS: Provide the account name
22 and the password to the specified individual, Mr.
23 Drummond, or somebody else at Ohana.

24 THE COURT: Provide the account name and
25 password?

1 THE WITNESS: Yep, I -- I believe --

2 THE COURT: To -- to the specified
3 individual?

4 THE WITNESS: Yeah.

5 THE COURT: And at this point it's going
6 to be who, Mr. Drummond?

7 MR. BRENNEN: Well, we -- we wanted it
8 to be, uh, Phil Leadore with Hartman --

9 THE COURT: Okay.

10 MR. BRENNEN: -- Executive Advisors, who
11 we've retained, who Ohana has retained --

12 THE COURT: Okay.

13 MR. BRENNEN: -- to, uh, as a consultant
14 for their IT needs.

15 THE COURT: Okay. And what else?

16 THE WITNESS: I believe the key he's
17 referring to is -- is a little token or device --

18 THE COURT: Mm-hmm.

19 THE WITNESS: -- that is part of the
20 multifactor authentication, so that's the additional
21 steps.

22 THE COURT: So it is needed?

23 THE WITNESS: Account, password and
24 token.

25 MR. DILLON-CAPPS: Mm-hmm.

1 THE COURT: And there's probably a good
2 reason that this kind of security is hard to break,
3 but there's no way to contact, erm, Microsoft, like
4 the owner of the business to contact Microsoft and
5 say, we have an employee who's refusing to comply
6 with our request and we need to bypass all of this?

7 MR. BRENNEN: Excellent question, your
8 Honor. Erm, in fact, uh, throughout this erm, we
9 have been, uh, both through Ohana's connections with
10 Microsoft as a customer --

11 THE COURT: Mm-hmm.

12 MR. BRENNEN: -- and then Miles &
13 Stockbridge's, erm, contacts with Microsoft's Legal
14 Department, have been trying to get them to do just
15 that.

16 Uh, we sent them a copy of the TRO, uh,
17 in the hopes that that would, uh, enable them to take
18 action, and they could, they just won't, erm, because
19 they're not going to put their neck out and risk the
20 idea that the wrong person gets the stuff, and then
21 they get sued for giving it to the wrong person.

22 THE COURT: Okay.

23 MR. BRENNEN: So we sent them a copy,
24 well, I sent their legal, three of their lawyer --
25 in-house lawyers a copy of the TRO, and their

1 response was, well, this TRO doesn't order Microsoft
2 to do anything.

3 And I said, well, what if we get the
4 preliminary injunction and we include in it that,
5 erm, Microsoft Corporation is directed to take these
6 steps as well.

7 And I sent them the draft, the proposed,
8 uh, injunction order, uh, asked for their comments,
9 they gave me some, we incorporated them in the order,
10 as late as yesterday.

11 I sent the existing order that we're --
12 that we were -- intended to submit to the Court and,
13 erm, to them, and they said "if this is issued they
14 will -- they will process it".

15 So that's another avenue, but I --
16 but -- and I am prepared to, and I would like the
17 Court to enter the order as proposed, erm, because
18 Microsoft is definitely not going to do anything if
19 -- if -- if that's not issued. As far as my, our
20 experience so far is they will not do anything until
21 they see the words Microsoft Corporation on
22 something.

23 Erm, but I -- even if your Honor granted
24 that, I would still want it, the preliminary
25 injunction granted.

1 THE COURT: That's an -- that's an order
2 that orders Microsoft to do something?

3 MR. BRENNEN: It is.

4 THE COURT: Okay. Well, would they have
5 to be properly brought in?

6 MR. BRENNEN: I, you know, I asked them,
7 they did not raise that issue of -- of whether or not
8 they would be a party, erm, and I'm -- I'm prepared
9 to hand up to the Court to entire e-mail string.

10 THE COURT: Okay. Well, I'm not sure I
11 need that right now.

12 MR. BRENNEN: Sure.

13 THE COURT: Erm, Mr. Dillon-Capps, how
14 long would it take you to go get the fob and find the
15 passwords?

16 MR. DILLON-CAPPS: It -- I cannot answer
17 that until I find out where exactly it is right now.

18 THE COURT: All right. Well --

19 MR. DILLON-CAPPS: It could be in
20 another state. It could be in Texas.

21 THE COURT: All right, given -- it could
22 be in Texas?

23 MR. DILLON-CAPPS: Yeah, that's where
24 they are.

25 THE COURT: Who's "they"?

1 MR. DILLON-CAPPS: Cello.

2 THE COURT: Well, you don't even know
3 if it's -- you mean, if you mailed it?

4 MR. DILLON-CAPPS: Mm-hmm.

5 THE COURT: Is that a yes?

6 MR. DILLON-CAPPS: Yes, sir.

7 THE COURT: You don't know if you have
8 or not.

9 MR. DILLON-CAPPS: Like I said, my wife
10 actually has an affidavit here, but she's a licensed
11 C counselor (phonetic), and she can tell you I'm
12 spending huge amounts of time like --

13 THE COURT: Well, you're causing
14 yourself to spend more time by -- All right. Well,
15 you've now -- you've now conceded, that -- that the
16 witness, in other words, the --

17 MR. DILLON-CAPPS: Yes, sir.

18 THE COURT: -- uh, the contractor or
19 agent that the -- that the plaintiff is asking that
20 you provide access to, if you were to do that would
21 not put you at risk at all.

22 MR. DILLON-CAPPS: No, no --

23 THE COURT: So there's no reason not to
24 comply with the order.

25 MR. DILLON-CAPPS: Your Honor, no one's

1 ever asked me to give it to him.

2 MR. BRENNEN: That -- that's the one
3 point I was going to clarify. He's been saying he
4 would give it to him because he has got the PCI
5 QSA --

6 THE COURT: Okay.

7 MR. DILLON-CAPPS: -- qualifications.

8 THE COURT: All right.

9 MR. BRENNEN: We would take that.

10 THE COURT: Fine. Give it to him.

11 MR. DILLON-CAPPS: Absolutely.

12 BY MR. BRENNEN:

13 Q And you're comfortable taking on that
14 role?

15 A Yes.

16 THE COURT: All right. Well, I am going
17 to hold the defendant in contempt. He can purge the
18 contempt by providing what the defendant (sic) needs
19 within 24 hours. And if not, you're going to be
20 subject to what -- what relief would you want if he
21 -- if he -- I'll hear from him as well, but if he
22 continues to not to comply, because at that, I mean
23 I've got to give him, uh, I can fine him and I can
24 give him an ability to purge, but I'm not -- you
25 haven't asked that he be jailed, nor would I do.

1 MR. BRENNEN: We -- we haven't asked
2 that he be jailed.

3 THE COURT: But there's -- but there's
4 got to be -- but there's got to be some teeth, I
5 think, to require the defendant to comply with the
6 order.

7 MR. BRENNEN: So, let me parse this out.

8 The Motion For Contempt is to hold him
9 in contempt for the TRO, which expires tomorrow.

10 THE COURT: Right, which can be
11 extended.

12 MR. BRENNEN: Which -- which can be
13 extended, that's true, and we can go that route
14 instead of entering the preliminary injunction,
15 although that will not get me what I need to try to
16 use the other angle with Microsoft.

17 THE COURT: Well, well, let me ask, do
18 you -- well, and again, this is all going to be --
19 the preliminary injunction will all become mute once
20 he complies, erm, presumably once access is given.

21 MR. BRENNEN: Except --

22 THE COURT: Well, except that you want
23 -- you want him to, uh --

24 MR. BRENNEN: Hands off.

25 THE COURT: -- you -- you don't want him

1 to attempt to get access even -- even though,
2 presumably, you will take him off the account.

3 MR. BRENNEN: They'll (unintelligible,
4 speaking over), your Honor.

5 THE COURT: But you don't want him
6 attempting to hack if the he's created a backdoor or
7 something, you know, whatever right?

8 Do you have -- do you have any problem
9 with entry of the preliminary injunction order, given
10 -- given what they're asking to do to provide it to a
11 qualified individual?

12 MR. DILLON-CAPPS: I only of unknown
13 time. I can tell you --

14 THE COURT: "Unknown time", what does
15 that mean?

16 MR. DILLON-CAPPS: I can -- 24 hours how
17 long it will take, and I promise you it will not take
18 more than Monday, and I will do it as fast as I can.

19 I also attest under oath that I have
20 tried to give access to four different people, Jeff
21 (phonetic) had it from (unintelligible) at one point,
22 and returned it back.

23 Erm, I've done everything I can. I've
24 been acting in good faith beyond measure, it's just
25 been not disclosed to you.

1 THE COURT: Well, I don't know about all
2 of that, but all -- but what I know is right now,
3 what's on -- what's on the table --

4 MR. DILLON-CAPPS: Yes.

5 THE COURT: -- which -- which I've heard
6 you say that he -- you believe him to be qualified
7 and have no issue in providing, erm -- so actually
8 I'd have to modify, erm, the -- the TRO said
9 providing access to Phil Leadore.

10 MR. BRENNEN: Correct.

11 THE COURT: Is it Leadore or Leadore?

12 MR. BRENNEN: Leadore --

13 THE COURT: Leadore.

14 MR. BRENNEN: -- from my understanding.

15 THE COURT: Okay. And I guess now to
16 some extent to alleviate the defendant's concerns, we
17 would change it, change the name of the person.

18 MR. BRENNEN: That's fine. And I -- and
19 I've -- would be prepared to change the names in the
20 proposed preliminary injunction order. We could do
21 that with a pen right now.

22 THE COURT: Okay. Do that.

23 MR. BRENNEN: Okay.

24 THE COURT: I mean, to the extent I have
25 to make any findings, I guess I -- I will -- I will

1 say that, erm, that based on what I've heard at the
2 hearing today, I do think -- I do believe that the
3 plaintiff has a high likelihood of succeeding on the
4 matters, erm, a high probability of prevailing, erm,
5 on the merits.

6 Uh, there's no question that the
7 defendant is an employee of -- of the plaintiff and
8 that he owes -- he owes a duty of loyalty to the
9 plaintiff, as well.

10 And, erm, at -- at this point has
11 refused to, you know, he says that he had issues. He
12 denies that he refused, but at this point, erm, and
13 the Court -- and this isn't -- this isn't a finding
14 on the merits, that would have to await, uh, a -- a
15 trial on the merits of the case, and that would be up
16 to a judge -- a jury down the line to decide if there
17 was any liability.

18 But I do think that there's a high
19 likelihood, or there is a likelihood of the plaintiff
20 prevailing on the merits.

21 I do, erm, also agree with the plaintiff
22 that, uh, not having access to, erm, to its IT
23 system, including Microsoft 365, and to its GoDaddy
24 account and whatnot, erm, and actually it being, I
25 would say that it being in the hands of an employee

1 who has, erm, at least shown some signs of being
2 uncooperative, erm, that Ohana, erm, is at risk and,
3 erm, and is suffering and will continue to suffer
4 immediate and irreparable harm, unless the injunctive
5 relief is granted.

6 And, uh, in terms of the balance of
7 convenience, erm, the, uh, here the, uh, the risk and
8 -- and the harm is entirely on the plaintiff.

9 I really don't -- I haven't -- I really
10 can't, erm, I have not heard, let me put it that way,
11 and I can't really think on my own of -- of any
12 reason why the defendant, you know, what harm would
13 come of the defendant in complying, erm, with the
14 requested injunctive relief, and, in fact, he's
15 conceded today that, uh, if -- if modified so that he
16 was directed to, erm, provide -- provide access to
17 the witness, that this witness does have the proper
18 certifications, qualifications. That it -- not --
19 not that I necessarily agree that he would be, that
20 the defendant would be at risk anyway, but he -- he
21 concedes that providing the access to this
22 individual, Mr. Romes, erm, would alleviate that
23 concern.

24 Erm, and, erm, although public interest
25 is not a huge factor in the case, the Court does

1 believe that it serves the public interest in
2 granting the relief. And, again, uh, the Court does
3 find that the plaintiff will suffer irreparable
4 injury, if not.

5 The only questions I have in terms of
6 modifying the TRO, do we want to, erm, do you want to
7 be anymore specific in terms of the affirmative
8 relief you're seeking to ask him, you know, following
9 whatever this witness says is necessary to require
10 him, erm, to do that?

11 And then, as far as the -- and then,
12 we'll have -- we'll have to come back and kind of tie
13 the bow on the contempt as to how much time I'm going
14 to give the, uh, defendant to comply with the order.

15 MR. BRENNEN: Yeah, I -- I think, erm,
16 we could very quickly revise the order to -- to work
17 in the, first of all, change the addresses to -- to,
18 erm, Mr. Romes's addresses. Erm, and, uh, to add the
19 specific points with respect to the -- although
20 create a creator account and give it the rights are
21 already in the order, erm, the only thing is missing
22 is the token piece, I think.

23 Erm, so, but we will make sure that --
24 that the order --

25 THE COURT: Okay. Well, why don't you

1 -- why don't you word it precisely that makes it
2 clear, so there's no ambiguity to the defendant as to
3 what he has to do, erm, don't -- don't go beyond kind
4 of what's been discussed in court today.

5 I'm not going to impose additional
6 requirements where we haven't -- I haven't heard
7 testimony on or don't understand.

8 Yes, sir?

9 MR. DILLON-CAPPS: Can I suggest the
10 actual task? So I --

11 THE COURT: You can. I mean, you know,
12 I'll hear what the witness has to say, I may or may
13 not follow it, but go ahead, let's hear it.

14 MR. DILLON-CAPPS: I -- I --

15 THE COURT: And, sir, I'm not trying to
16 be difficult. I'm trying to -- you know, what you've
17 told me is that this is causing you -- that -- that
18 you suffer from PTSD and memory issues, and I'm
19 guessing that being in court and having a judge
20 lecture to you probably doesn't help the PTSD.

21 And I'm not trying to exacerbate any
22 condition. I'm trying to get to the bottom here,
23 particularly now that you've conceded the expertise
24 of this witness.

25 MR. DILLON-CAPPS: Mm-hmm.

1 THE COURT: And this is a very easily
2 solvable situation.

3 MR. DILLON-CAPPS: Mm-hmm.

4 THE COURT: Erm, it can't go on forever.
5 You're putting this company, erm, you know, at a
6 minimum you're inconveniencing them, and at worse
7 you're putting them at -- at risk of the very
8 protections, which you claim that -- as to why you've
9 kind of protested and stood in the way of doing this.

10 And so I want this resolved sooner than
11 later, and I have to bring, you know, I have to think
12 about or I'm opening -- opened to listening about
13 whether we're going to come back tomorrow and have a
14 hearing to see where we stand or not, because I don't
15 want this, you know, you know, hanging out there for
16 a long time. And that's not only for the benefit of
17 the plaintiff, but also to give you proper guidance
18 as to how to comply.

19 I don't want to hold you in contempt. I
20 want compli -- all I want is compliance with the
21 Court order here. And I want, this, you know, again,
22 particularly given you're conceding that this
23 witness, erm, you know that there's not a concern in
24 giving it to him. I want this resolved, you know, I
25 think that's quite clear.

1 MR. DILLON-CAPPS: I want to make it
2 very clear, your ruling is brought us a lot of relief
3 in tremendous amounts.

4 Erm, I will -- he gives me his e-mail
5 and I will coordinate with him promptly, and as fast
6 as possible to give him everything he needs. I'm not
7 kidding.

8 THE COURT: All right. Well, I'm going
9 to want a status on this.

10 I'll tell you what, I'll accept your --
11 I'll accept your proffer to representations of good
12 faith.

13 MR. DILLON-CAPPS: Mm-hmm.

14 THE COURT: And I'm going to hold, I'm
15 not going to rule against or for it right now, but
16 I'm going to hold the contempt in sub curia, but, uh,
17 we're going to come back for a status conference, and
18 if you're not cooperating then I'm going to rule on
19 the contempt.

20 MR. DILLON-CAPPS: Mm-hmm.

21 THE COURT: And provide specific, erm,
22 orders as to what you need to do and the timeframe
23 for doing it. And if you don't do it there's likely
24 to be a substantial monetary fine to give you some
25 incentive to purge the contempt.

1 MR. DILLON-CAPPS: I reiterate, I've
2 been trying to get rid of this thing for a long time.

3 THE COURT: Okay. Well then, let's do
4 it.

5 MR. DILLON-CAPPS: I will absolutely
6 coordinate, you will -- can I cc your, uh, who, I
7 forgot the name of the person, but the -- your --
8 your staff member, can I cc that person while
9 e-mailing this gentleman?

10 THE COURT: If you'd like to you can cc
11 my law clerk at the same time you cc'ing counsel and
12 the witness.

13 MR. DILLON-CAPPS: Absolutely, yep.

14 THE COURT: When are we coming back
15 to -- on a status?

16 MR. DILLON-CAPPS: I -- you will see an
17 update in the next like, what time is it now? By
18 noon tomorrow you will have a timeline that says how
19 long it will take, and it will stick to that time.
20 If you disagree, you can just tell me anything that's
21 reasonable.

22 THE COURT: All right. Counsel, I don't
23 think I need witnesses here, but when can you come
24 back for a status conference?

25 MR. BRENNEN: I'm at the Court's

1 disposal.

2 THE COURT: 1 o'clock tomorrow?

3 MR. BRENNEN: 1 o'clock tomorrow.

4 MR. DILLON-CAPPS: I -- I need time to
5 -- I will e-mail at noon where (unintelligible) I
6 promise you.

7 THE COURT: Noon today?

8 MR. DILLON-CAPPS: No, noon tomorrow, I
9 will have an answer of how long it's going to take me
10 to get it.

11 THE COURT: No, you don't need to --

12 MR. DILLON-CAPPS: I don't think it will
13 take --

14 THE COURT: -- that much time. I mean,
15 I don't know how much time you need for an answer,
16 but it doesn't take -- I don't want to wait until
17 noon tomorrow, and then have a hearing at 1 o'clock.

18 MR. DILLON-CAPPS: I'm telling you what
19 I can guarantee. I'm going to go as fast as I can.
20 It might be today, it might be Monday, I don't
21 know -- I will know by noon tomorrow.

22 THE COURT: Regardless, we're coming
23 back at 1 o'clock tomorrow so you can report specific
24 -- your specific progress.

25 MR. DILLON-CAPPS: Okay.

1 THE COURT: And we can have, if we need,
2 erm, the witness available maybe he can be available
3 by Zoom or telephone. I know you have witnesses and
4 people here, I don't think it's necessary for them to
5 come back --

6 MR. BRENNEN: Understood.

7 THE COURT: -- for it.

8 And I'll sign the -- if you -- if you
9 send me the preliminary injunction hearing as
10 modified -- uh, order, if it looks acceptable to me I
11 will -- I will apply my own eyes to it and -- and,
12 uh, copy the defendant on it as well, but I'm -- I'm
13 likely to sign it today, assuming it comports with
14 what we've discussed.

15 MR. DILLON-CAPPS: The only thing I ask,
16 your Honor, is that I am able to e-mail him at least
17 one time because in his --

18 THE COURT: You can e-mail him more than
19 once, I don't care, just get it done.

20 MR. DILLON-CAPPS: I will -- in his
21 affidavit he actually doesn't know any information,
22 he never saw the analysis that were provided to the
23 -- the anyone (unintelligible).

24 THE COURT: Okay. Well, you might be
25 making this more complicated than --

1 MR. DILLON-CAPPS: No, no, no.

2 THE COURT: -- it has to be.

3 MR. DILLON-CAPPS: I just want to
4 provide him with the analysis because he --

5 THE COURT: I don't think he needs the
6 analysis.

7 MR. DILLON-CAPPS: -- deserves the right
8 to know.

9 THE COURT: He told you what he needs.
10 Just provide him what he needs.

11 MR. DILLON-CAPPS: Ask -- ask him if he
12 needs that.

13 THE COURT: Analysis of what?

14 MR. DILLON-CAPPS: Ask him if he
15 needs -- in order to make a judgment as to
16 compliance, and if it does comply.

17 THE COURT: No.

18 MR. BRENNEN: We're not --

19 THE COURT: We're not going there.

20 MR. BRENNEN: We're not going there.

21 MR. DILLON-CAPPS: I'm just saying that
22 is --

23 THE COURT: It's not up to you to
24 challenge what, it's -- you know, you've already
25 conceded he's an expert, I'll accept his expertise.

1 MR. DILLON-CAPPS: I can see that. He
2 needs to be given information to be an expert though.

3 THE COURT: You know, you're going
4 backwards on me here. I thought we had -- I thought
5 we were going in the right direction, but --

6 MR. DILLON-CAPPS: I'll -- let -- he --
7 you ask him if he needs information to know if it's
8 PCI compliance?

9 THE COURT: Do you need information?

10 THE WITNESS: This isn't about PCI
11 compliance. We just need the credentials.

12 THE COURT: Okay.

13 MR. DILLON-CAPPS: That -- that makes me
14 worried 'cause --

15 THE COURT: All right, sir, are you
16 going to agree to do it or not 'cause otherwise, I'm
17 -- I'll just proceed with the contempt now.

18 MR. DILLON-CAPPS: I'll meet you
19 tomorrow at 1. I -- I -- I can't say what I'm not
20 going to do until I know how long its going to take.

21 THE COURT: All right. We'll come back
22 at 1 o'clock tomorrow, but be prepared to report
23 fully on the status of things.

24 MR. DILLON-CAPPS: I will.

25 THE COURT: And if you're not in

1 compliance then you're going to be facing contempt.

2 MR. DILLON-CAPPS: I -- I appreciate
3 that, uh, and thank you for your time. I mean, I
4 wish there was things I could do right now
5 (unintelligible) I just --

6 MR. BRENNEN: Your Honor, I -- I'd like
7 to have Mr. Rome has had an opportunity to address
8 the Court on -- on how logistically that works with
9 him.

10 THE COURT: Okay. Tell me how.

11 THE WITNESS: We -- we can either have
12 an account set up, given the right permissions, get
13 the -- get the, uh, multifactor key or, erm, the
14 defendant could just give us his credentials.

15 MR. DILLON-CAPPS: I don't have my
16 credentials.

17 THE WITNESS: As far as -- as far as I
18 know he hasn't been --

19 THE COURT: How could you not --

20 THE WITNESS: -- logically locked out of
21 the system. He says he's not accessing it --

22 THE COURT: Mm-hmm.

23 THE WITNESS: -- which means he's
24 choosing not to, but he still has --

25 THE COURT: So if you just -- and these

1 are his credentials for this system and this company?

2 THE WITNESS: His -- his credentials
3 probably have the global admin rights.

4 MR. DILLON-CAPPS: They still do, but my
5 key doesn't exist anymore.

6 THE WITNESS: So your key doesn't --
7 then -- then that doesn't -- then it doesn't work.
8 If his key doesn't work, the multifactor doesn't
9 work.

10 THE COURT: Okay. So that doesn't work.

11 THE WITNESS: Never mind.

12 THE COURT: Okay.

13 THE WITNESS: Sorry I brought it up.

14 THE COURT: The key, again, is that --
15 is that -- is that a key fob type, is that a physical
16 object that's a multifactor -- what -- what is the
17 key in this context?

18 THE WITNESS: It -- it -- it could
19 either, you know, you think of the old RSA ones that
20 have a digit, it might be literally a physical key
21 you plug in and -- and it does it without any
22 numbers.

23 THE COURT: Where is that key?

24 MR. DILLON-CAPPS: Mine is gone.

25 THE COURT: Well, where is it?

1 MR. DILLON-CAPPS: The only systems that
2 -- I can't log into an administrative system without
3 it.

4 THE COURT: Where -- where is --

5 MR. DILLON-CAPPS: I got rid of it.

6 THE COURT: When?

7 MR. DILLON-CAPPS: When I was told to.

8 THE COURT: Okay. And what does "get
9 rid" of it mean?

10 MR. DILLON-CAPPS: I mean, I --

11 THE COURT: Like you threw it in the
12 trash?

13 MR. DILLON-CAPPS: Yes.

14 THE COURT: Is that a safe thing to do?

15 MR. DILLON-CAPPS: I mean, it just -- I
16 got rid of it because I was told to remove my ability
17 to have access, so I did.

18 THE COURT: What did you do with it,
19 tell -- tell me specifically what did with it.

20 MR. DILLON-CAPPS: I don't know. I got
21 rid of it. It's not where it was.

22 THE COURT: All right. We're going to
23 come back at 1 o'clock tomorrow. I -- I suggest that
24 you think long and hard about -- about all this.

25 Erm, the Court's going to, uh, enter the

1 preliminary injunction, I'm sorry, yeah, I'm going to
2 enter the preliminary injunction order after I've had
3 a chance to review it, make sure it's in proper order
4 and form.

5 It would be based upon the testimony and
6 arguments that I've heard today, and the findings and
7 the Court has made.

8 Erm, you know, as I'm -- I'm going to
9 hold sub curia until tomorrow at 1 o'clock, erm, the,
10 uh, the contempt, erm, but I'm going to, you know,
11 I'm hoping that there'll be some progress.

12 You know, it doesn't seem to me, erm,
13 that there's any, at this point, legitimate reason to
14 withhold, given you're conceding that this -- that
15 this witness, erm, has the -- is credentialed, erm,
16 and has whatever, I don't know if certifications is
17 the right term or not but, erm, is credentialed
18 enough to and trusted enough to, uh, been given the
19 information.

20 And -- and so I don't -- I don't see any
21 legitimate purpose in you refusing at this point to
22 comply with the Court order.

23 Again, to the extent that you claim that
24 there's any family, FMLA issues, those are separate,
25 as far as the Court's concerned. To the extent that

1 you have any remedies, the Court is certainly making
2 no ruling on those, that would be up to you to pursue
3 that as a separate matter, okay, that's not a defense
4 to this case. So, that's where I am.

5 We're going to come back to this -- we
6 are free here tomorrow, aren't we, Rachel, do we
7 have, 1, do you have anything scheduled?

8 Even if we are, we're going to come back
9 here to the courtroom, Courtroom 8 here, 1 o'clock
10 tomorrow, okay?

11 MR. DILLON-CAPPS: Mm-hmm.

12 THE COURT: And, uh, if we need a
13 witness or anyone available we can arrange, uh, can
14 put the witness up by Zoom on that television. I
15 don't want to hold any -- are you from out of town?

16 THE WITNESS: I am.

17 THE COURT: Okay.

18 THE WITNESS: I -- I might be able to
19 arrange to stay.

20 THE COURT: Okay. That's -- that's
21 between you and --

22 THE WITNESS: We'll -- we'll work it
23 out.

24 THE COURT: -- your counsel or the --
25 the plaintiff's counsel, I should say, not your

1 counsel.

2 Any -- All right. Did I cut him off?
3 Did he finish saying what he needed to say?

4 MR. BRENNEN: I think he did.

5 THE WITNESS: We're good.

6 THE COURT: All right. Why don't you
7 tell us one more time just so we have a very clear
8 record of what -- what is it that you need the
9 defendant to do.

10 THE WITNESS: We need --

11 THE COURT: We ruled out the issue,
12 assuming that he's disposed of his key, that's --

13 THE WITNESS: I'm not going to specify
14 the names of people in case I get them wrong. We
15 need an account set up. We need a password for it,
16 that account needs to be given global admin rights,
17 and we need whatever is required for the multifactor
18 authentication so we can get in it and administer the
19 system.

20 THE COURT: Okay. Can you please
21 include that in an order?

22 MR. BRENNEN: Sure.

23 MR. DILLON-CAPPS: Strong factor.

24 THE COURT: All right. All right.

25 Anything else?

1 MR. DILLON-CAPPS: Just make sure it's a
2 strong factor.

3 MR. BRENNEN: A strong password?

4 MR. DILLON-CAPPS: Strong factor.

5 MR. BRENNEN: Factor?

6 MR. DILLON-CAPPS: Yeah.

7 MR. BRENNEN: Okay.

8 THE COURT: All right. See you tomorrow
9 at 1 o'clock.

10 (Whereupon, the proceedings concluded at
11 10:52:47 a.m.)

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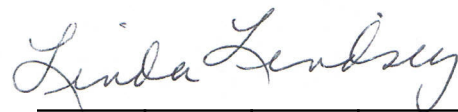
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REPORTER'S CERTIFICATE

I, Linda Lindsey, CSR do hereby certify that I recorded stenographically from Digital Media from Baltimore County the proceedings in the matter of Ohana Growth Partners, LLC versus Ryan Dillon-Capps, Case Number C-03-CV-224-002264, on June 26, 2024

I further certify that the foregoing pages numbers one through 102 constitute the official transcript of proceedings as transcribed by me to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 30th day of June, 2024.



Linda Lindsey, CSR